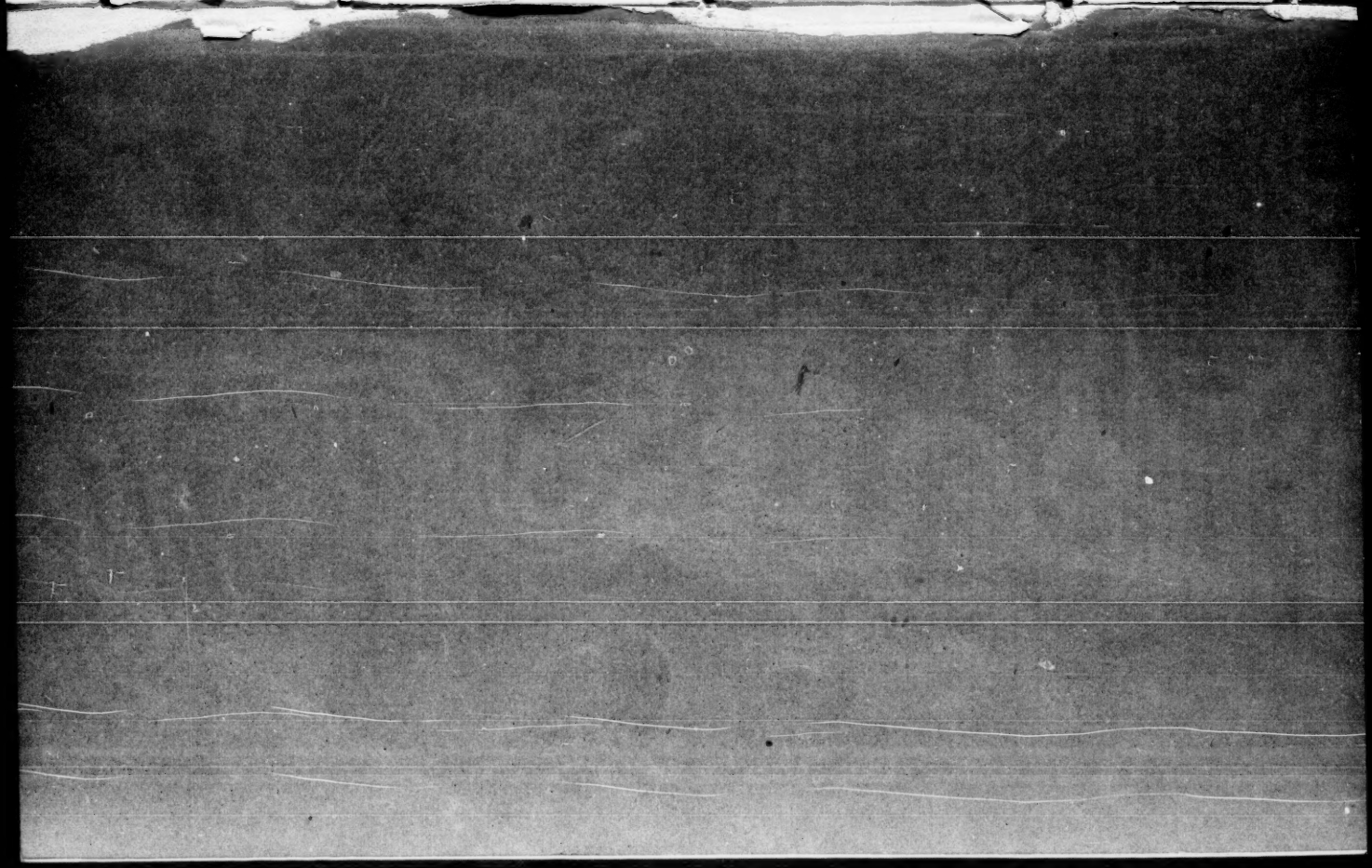

SUPREME COURT OF THE UNITED STATES.

No. 222.

WILLIAM H. GUNNELL, APPELLANT,

vs.

JOHN A. BIRD, ADMINISTRATOR DE BONIS NON OF WILLIAM BIRD, DECEASED, AND DAVID HEPBURN, ADMINISTRATOR OF PETER HEPBURN, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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0 In the supreme court of the District of Columbia.

BIRD & HEPBURN
v.
W. H. GUNNELL. } Eq. doc. No. 685.

It is stipulated and agreed that the following proceedings, and none others, be and are comprised in the record in this cause, on appeal to the Supreme Court of the United States.

1. Bill of complaint, August, 1850.
2. Subpœna and marshal's return, August, 1850.
3. Answer of defendant, Dec. 6, 1851.
4. Reference to auditor.
5. Report of auditor, Aug. 27, 1852.
6. Submission on auditor's report, May 31, 1854.
7. Bill of revivor, June 8, 1859.
8. Answer to bill of revivor, Octo. 20, 1859.
9. Reference to auditor, Octo. 20, 1859.
10. Further report of auditor, Feb. 6, 1866; with complainants' alternative account; defendant's alternative account.
11. Complainants' exceptions, Mar. 30, 1866.
12. Defendant's exceptions, Mar. 30, 1866.
13. Stipulation to submit the cause, June 13, 1866.
14. Decree, June 16, 1866.
15. Appeal to general term by both parties, July 16, 1866.

Proceedings in general term:

1. Re-reference to auditor, Nov. 20, 1866.
2. Auditor's report, Feb. 11, 1867.
3. Exceptions by both parties, Feb. 11, 1867.
4. Petition of adm. d. b. n. of Wm. Bird to be admitted to prosecute suit and order thereon, Feb. 8, 1868.
5. Decree affirming dec'ee of special term, Feb. 8, 1868.
6. Order allowing complainants' appeal, Feb. 8, 1868.
7. Order allowing defendant's appeal, Feb. 8, 1868.
8. Defendant's appeal bond.
9. Complainants' appeal bond.

JNO. D. McPHERSON,
F'r Complainant.
JOS. H. BRADLEY,
For Def't.

1 *Bill of complaint.*

In chancery, circuit court, D. C. Washington.

WILLIAM BIRD & PETER HEPBURN, COMPL'T,
vs.
WILLIAM H. GUNNELL, DEF'T. }

To the hon'bl. the judges of the circuit court of the District of Columbia for the county of Washington, in chancery:

Humbly complaining shew unto your honors, your orators, William Bird and Peter Hepburn—

That on or about the first day of May, in the year of our Lord one thousand eight hundred and forty-five, your orators entered into a co-

partnership in the lumber business with one William H. Gunnell, of the county aforesaid, whom they pray your honors to make party defendant to this their bill of complaint.

That by the terms of the said agreement of copartnership your orators were to contribute together one-half of the necessary capital, and the said defendant the other half, and that your orators should have one-half of the profits of the said business, and the said defendant the
2 other half, he, the said defendant, being also allowed by said agreement a yearly salary of one thousand dollars for his personal services which he was to give in the superintendence and management of the said business, and a further salary of five hundred dollars for a clerk, if employed by him at that rate; your orators not appearing actively as partners in the said concern.

That accordingly the said defendant put into said business as capital
$6,627 56 a quantity of lumber valued at six thousand six hundred and
$7,775 65 twenty-seven $\frac{56}{000}$ dollars; and your orators put in money the
$1,148 09 sum of seven thousand seven hundred and seventy-five $\frac{65}{000}$ dollars, an amount exceeding by $\$1{,}148\frac{09}{000}$ the amount contributed by said defendant; making a total capital of $\$14{,}403\frac{21}{000}$.

That the said business was extensive and profitable, and was carried on and managed by the said defendant for himself and your orators under the said agreement, until the 1st day of May, 1849, when the said defendant having other views for himself, it was agreed that the said copartnership should be wound up, and that an account and settlement should take place between the parties thereto.

3 That in pursuance of the agreement for dissolution and settlement your orators have on their part done everything in their power to have a fair account stated. They have ascertained and charge that in the years 1845, '6, '7, & '8, there was purchased for the said
$61,774 11 business lumber to the amount of sixty-one thousand seven hundred and seventy-four $\frac{11}{000}$ dollars cost; that during the
$93,471 11 same years there was sold lumber to the amount of ninety-three thousand four hundred and seventy-one $\frac{11}{000}$ dollars; making, exclusive of the capital originally put in, an advance on the cost
$31,697 00 of the lumber purchased in said years, equal to thirty-one thousand six hundred and ninety-seven dollars.

That the expenses, including salaries as aforesaid, amounted
$12,242 95 to twelve thousand two hundred and forty-two $\frac{95}{000}$ dollars, shewing net profit, over and above the capital originally put in,
$19,454 05 to nineteen thousand four hundred and fifty-four $\frac{05}{000}$ dollars; whereof your orators are entitled to one equal moiety, equal to
$9,727 02 nine thousand seven hundred and twenty-seven $\frac{02}{000}$ dollars; your orators claim and are entitled to receive, and to have said defendant account for to them, their share of the profits and their share of the capital as aforesaid, together largely exceeding the sum of
4 seventeen thousand dollars, subject to such credits as may be found justly chargeable to them.

Your orators in a friendly way have frequently called upon the said defendant to account and settle with them in the premises, and have exhibited to him the results aforesaid, and have offered to submit the whole matter to the arbitration of mutual friends, and have by every means in their power sought to bring the said defendant to account and settlement, but without success. The said defendant had hitherto wholly neglected and refused, and still neglects and refuses, to account and settle in the premises, and refuses to admit the audit and statement of the affairs of the said copartnership prepared and exhibited to him by them

as aforesaid, or to shew wherein the same is defective or erroneous, or to take any steps whatever to settle and close the said partnership concern, he having had, as before stated, the personal management and direction of the said business, and your orators not having actively participated therein.

All which is against equity & conscience.

5 Wherefore and foremost, as your orators are remediless at and by the strict rules of the common law, and can only have relief in a court of chancery where such matters are properly cognizable:

To the end therefore that the said defendant may fully account in the premises, and may discover and set forth the true state and condition of the assetts of the said partnership, and may account to your orators and satisfy them for their share of the capital and profits thereof, and may appear and on their corpral oath answer all and singular the matters and things hereinbefore charged and set forth, and that an account may be stated under the direction of your honors, and that the said defendant may be decreed to pay over and satisfy to your orators whatsoever may be found to be due to them on such account, and, if need be, that a receiver may be appointed, and that they may have such other and further relief as may be consistent with equity, &c:

May it please your honors to direct a subpœna to be served upon the said William H. Gunnell, commanding him to be and appear in the court here, upon a certain pain, &c., and to answer, &c.

And your orators will ever pray, &c.

6 J. M. CARLISLE,
Solicitor & of Council of Compl'ts.

Memorandum by clerk.

Jurat to the original bill.

The sheet on which it was written having been torn off and lost, only the words following can be copied:

DISTRICT OF COLUMBIA,
Washington,

On the twenty-ninth
before me, the subsc
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appeared William
who, being severally
that the matt
bill charged
their own know
on information a
true as stated

7 *Sum's to ans.—Iss'd Aug.* 7, 1850.

Subpœna to answer original bill.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

You are hereby commanded to summon William H. Gunnell, if he shall be found in the county of Washington, that he be and appear in the

circuit court of the District of Columbia, at rules to be held for the county of Washington, at the city of Washington, on the first Monday of September next, to answer a bill of complaint of William Bird and Peter Hepburn, filed in court here against him.

Hereof fail not at your peril, and have you then and there this precept.

Witness the Hon. W. Cranch, chief judge of the said court.

Issued the 7th day of August, 1850.

JNO. A. SMITH, *Clk.*

MEMORANDUM.—The defendant to enter appearance in the suit on or before the day on which the above subpœna is returnable; otherwise the bill may be taken pro confesso.

Marshal's return on summons to answer.

"Summoned.—R. WALLACH, *Marshal.*"

8 *Answer of defendant Gunnell.—Filed Dec.* 6, '51.

In chancery, in circuit court of the District of Columbia for Washington County.

WM. H. GUNNELL
ats.
WILLIAM BIRD AND PETER HEPBURN.

The answer of William H. Gunnell to the bill of complaint of Wm. Bird and Peter Hepburn.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit of exception and advantage, &c., for answer to the said bill says, he admits that he did, at the time mentioned in the said bill, enter into a copartnership with the complainants, as stated in said bill, but not admitting the terms as therein stated, or the amounts put therein by the members thereof, as stated in said bill, he refers for the same to the books and papers in possession of complainants; and not admitting the statements of said bill as to the amounts of sales and purchases and expenses and profits, as stated in said bill, he in like manner refers to said books and papers.

He admits the dissolution of said copartnership at the time
9 stated in said bill, and says he then put into the possession and control of complainants all the books, papers, vouchers, assetts, and property of every description, that they might close the said business, and satisfy themselves out of the same.

He admits that differences have arisen between them, but he says he has been willing and desirous to refer them to the arbitrament of mutual friends, and has not objected or refused so to do, except that he did object to certain individuals named to him for that purpose by complainants.

Indorsement on answer:

"I agree to an order to refer the case to the auditor.

"JOS. H. BRADLEY,
"*For Gunnell.*"

10 *Order of reference to the auditor.—Filed Dec'r 6th, 1851.*

BIRD & HEPBURN
v.
GUNNELL.

Upon the application of both parties, by their counsel, on the 6th day of December, 1851, this cause is hereby referred to the auditor to state the partnership account between the parties in the matter of the bill, and he is authorized to call for the books and papers of the said partnership, and to take any testimony which may be adduced by either of the parties upon the usual notice, and that he report at the next term of the court.

By order of the court.

Test: JNO A. SMITH, *Clk.*

Report of auditor.—Filed Aug. 27, 1852.

BIRD AND HEPBURN
ag't
WM. H. GUNNELL. } No. 685, chancery.

The enquiry, under the reference in this cause, relates—1. To the proper statement of the partnership accounts, and division of the proceeds between the parties; and 2. Whether each has had his due share of the profits, and the capital advanced returned.

11 Both parties have agreed that the following facts are to be taken as established, viz: The business—the lumber business—in which Mr. Gunnell had been engaged, was to be under his care and management. His stock was put in, as his advance, at the value of $\$6,627\frac{56}{100}$. Bird and Hepburn advanced in cash $\$7,775\frac{65}{100}$. The whole capital went into Mr. Gunnell's hands. The expenditure for lumber and other articles, purchased of third persons for the business, during the four years, was $\$55,146\frac{55}{100}$; the expenses of conducting it, $\$12,242\frac{95}{100}$; the aggregate sales made, of every description, $\$93,471\frac{11}{100}$. They were to share equally; and profits were made.

At the termination of the partnership the stock on hand, the books, and unsettled accounts went into Bird and Hepburn's hands.

They file the bill, and claim a balance of $\$17,640\frac{43}{100}$, as due to them, at the termination of the business, from the defendant.

Their statement is G. 1. They charge the entire sales, $\$93,471\frac{11}{100}$; credit the expenses, $\$12,242\frac{95}{100}$; and give a further credit of $\$61,774\frac{11}{100}$, as for lumber purchased; leaving $\$19,454\frac{95}{100}$, as a "balance of net gain."

12 This they divide equally, assigning half—i. e., $\$9,727\frac{02}{100}$—to each as "profit;" and adding thereto $\$7,775\frac{65}{100}$, the capital advanced by Bird and Hepburn, and an item of interest, they thus make their share the sum claimed, namely, $\$17,640\frac{43}{100}$.

In the sum of $\$61,774\frac{11}{100}$, set down by the compl'ts for the purchase of stock during the partnership, they have included the $\$6,627\frac{56}{100}$, the original capital of the defendant.

The defendant's statement is G. 2. He assumes the statement by the compl'ts in G. 1, of the sales, purchases, capital, and expenses as correct, but he objects that the balance of $\$19,454\frac{95}{100}$, shown in that statement, includes the original capital of $\$14,403\frac{21}{100}$ of both parties, claims its de-

duction, and makes the "profits" of the business $5,050\frac{05}{100}$. The error imputed to the compl'ts by the def't is, that the whole $19,454\frac{05}{100}$ is considered in their statement as profit, and, leaving his own capital in the expenditure for purchases, his correction of the error is the deduction of the original capitals of both parties from the $19,454\frac{05}{100}$.

There can be no doubt that before profit can be ascertained
13 the original capital must be deducted from the net assets on hand at the termination of the business.

But the error in this case, on the part of both compl'ts and defendant, in the statements they have submitted, it seems to the auditor, lies in adding the capital of $6,627\frac{56}{100}$ put in the business by the def't, to his expenditure for purchases of lumber during the partnership.

The invoice book has been carefully examined, and the entire expenditure by the defend't for purchases made from third persons, for lumber and other articles for carrying on the business, is shown to amount to $55,146\frac{55}{100}$. To make up the $61,774\frac{11}{100}$ the sum of $6,627\frac{56}{100}$ was necessary; and it is added in the compl'ts' statement of the purchases, and deducted from the sales. The invoice books show that it is included in the sum of $22,475\frac{58}{100}$, represented in the compl'ts' statement as paid by the defend't for the purchase of lumber in the first year of the partnership. The same book shows the amount actually paid for purchases in that year to have been the sum of $15,848\frac{25}{100}$ only.

14 The capital of the defendant should not, it is submitted, have been so included. The stock or lumber put in by the defend't was the representative of money, and corresponded, as far as it went, with the cash capital advanced by the compl'ts. It was not a purchase made by the firm from the defendant, but his share of the capital advanced. If it was proper to include his original capital in the first year's purchases, and to deduct it as an expenditure, was it not equally so to include the compl'ts' cash capital? Should not both have been included and deducted, or neither? It can make no difference that one consisted of goods and the other of money.

The error of the compl'ts, therefore, it is thought, consists in adding the capital of the defend't to his expenditures for purchases, and in treating the balance of $19,454\frac{05}{100}$ as net gain or profit.

And the error of the defend't appears to be in adopting as right the compl'ts' addition of the defendant's capital to his expenditure, and his deduction thereof from the sales, and in claiming in addition a further deduction of the whole $14,403\frac{21}{100}$, the capital of both, from the balance of $19,454\frac{05}{100}$.

15 The effect of this, it is thought, would be to give the defend't his original capital twice; once, among his expenditures for purchases; and next, in the $14,403\frac{21}{100}$; while the compl'ts would obtain a return of their capital but once, namely, in the same $14,403\frac{21}{100}$, deducted at the close of the business.

The true rule for assertaining the profits and the shares of each partner in this case has given rise, it is understood, to much discussion between the compl'ts and the defend't, and the experienced accountants they have consulted; some of them sustaining the compl'ts' statement, and others the defend't's, as may be seen in G. 1 and G. 2.

It has been with much hesitation, therefore, that the auditor has come to a conclusion differing, in some respects, from both.

But the real profits of the business appear to him to have been $5,190\frac{14}{100}$, and the correct mode of stating the account to be, first, to charge the entire sales, then deduct the expenditures, first, for actual purchases, and second, for the expenses of carrying on the business;

next, the bad or outstanding debts. and then, the original capital of both the partners; and the balance would be profit, to be divided equally between them.

16 Upon the admissions of the parties, and assuming their statements of the sales, purchases, expenses, and capital as correct, and that the whole of the sales had been realized by Mr. Gunnell, as the statements submitted on both sides assume, then the account, it is supposed, should have been stated thus:

Total amount of lumber, &c., sold		93,471 11
Amount of the purchases		55,146 55
		38,324 56
Expenses of the business, as in G 1		12,242 95
		26,081 61
Capital: Gunnell's	6,627 56	
Bird & Hepburn's	7,775 65	
		14,403 21
Net balance, profit		$11,678 40
Half to Gunnell	5,839 20	
His capital	6,627 56	
	$12,466 76	
Half the profit to Bird & Hepburn	5,839 20	
Their capital	7,775 65	
	$13,614 85	

17 An obvious test would be to consider the defend't merely as an agent.

He would in that capacity be chargeable with all the sales		93,471 11
In which the original capital supplied him by both his principles would be merged. And against the sales he would have to be credited with his payments for stock purchased to carry on the business	55,146 55	
And with the expenses of the business	12,242 95	
		67,389 50
And he would have to hand over this sum to his employers, in money and debts, good & bad		26,081 61
Of which		14,403 21
would be their original capital.		
And their profits, subject to bad or unpaid debts.		$11,678 40

The result is the same as the statement on the other side.

So that if the entire amount of the sales, and all the assets, had come to the hands of the def't, and nothing had been received by the compl'ts,

the def't would, upon these statements, have been indebted to
18 them in the sum of $13,614\frac{85}{100}$.

But some of the debts were not collected, and are still outstanding, and additions, it is ascertained, have to be made to the expenditure for purchases; there is also an individual account against each of the parties on the books, and the complainants have made collections since the termination of the partnership. The above apparent balance would, therefore, have to be subject to a deduction for the compl'ts' collections, their account on the books, and to pay the addition to the expenditures, and of the bad outstanding debts; and for the residue the def't would have to answer to them, as the management of the business and the whole of the cash and assets were in his hands, from the commencement of the business to its close.

These matters were not taken into consideration by the gentlemen whose respective statements have been submitted by each party, the principle or rule for ascertaining profits only being presented therein.

The examination of them leads to the second branch of the enquiry; one which has been attended with more trouble, not on account
19 of any principle involved, but from the labor and difficulty of correctly ascertaining the facts. It is—

2. Whether, as profit was made, each party has received back the capital put in and the due share of the profits, and how much one owes the other.

The schedule G. 3 was filed by the compl'ts as containing a correct representation of the debts outstanding, and of the property on hand, at the termination of the partnership. Upon comparing that list with the books, it was found inaccurate in several particulars, and Schedule G. 4 has been compiled from that list, from the books, and the admissions of the parties during the investigations before the auditor.

Column 3 of that schedule shows the bad and uncollected debts, at this time, to amount to $\$5,461\frac{56}{100}$. In col. 2 the amount collected by the compl'ts since the dissolution of the partnership, and of their individual accounts on the books, is shown to be $\$7,552\frac{68}{100}$. And in col. 1 the defendant's collections from the same list, and the debts in it chargeable to him on his ———, and his individual account, are stated
20 and shown to amount to $\$7,886\frac{46}{100}$. The amounts stated in the two columns 1 & 2 are admitted by the parties to be correct, which verifies the accuracy of col. 3 of the bad debts, as assuming that the schedule contains, as it is believed it does, the whole of the outstanding debts, and the lots, stocks, and other property (the cash excepted) on hand at the close of the business.

The account is thus stated and submitted:

The total sales during the partnership made by the defendant.....		93,471 11
The total amount of lumber and other articles purchased by the def't for carrying on the business, as agreed by the parties.....	55,146 55	
And as increased by lime purchased of A. Hoover, not included in the above amount.....	732 18	
	———	55,878 73
Amount of the expenses of conducting the business, as shown in detail in compl'ts' statement G. 1.....	12,242 95	

And as increased by rent still unpaid due to the corporation, and not included in the above	111 —		
And by interest on the difference of capital	183 52		
		12,537 47	
21 Amount of bad & outstanding debts, property, &c., as shown in col. 3, G. 4		5,461 56	
			73,877 76
			19,593 35
Gunnell's capital		6,627 56	
Bird & Hepburn's		7,775 65	
			14,403 21
Net profit			5,190 14
Half to each			$2,595 07
Gunnell's capital	6;627 56		
His share of the profits	2,595 07		
		9,222 63	
Bird & Hepburn's capital	7,775 65		
Their share of the profits	2,595 07		
Interest on difference of capital	183 52		
		10,554 24	
Capital and profit and interest due Bird & Hepburn:			
Bird and Hepburn			10,554 24
Collected by them since the dissolution, and amount of their individual accounts on the books of the compl'ts, as shown in col. 2, G. 4			7,552 68
Balance of cash due compl'ts in the def't's hands			$3,001 56

Mr. Gunnell has stated that a note for $600, drawn by him, and endorsed by Mr. Bird, remains in the Patriotic Bank unpaid, and that it is the remnant of a loan made for the use of the business, which
22 was applied in the payment of lumber and other articles pur, chased, and he was understood to claim its deduction and allowance. In G. 3, where the expenses of the business are stated in detail $635 are allowed for contingencies, which sum is understood to represent the principal and interest of this note to 1 May, 1849.

A similar statement and claim were made by him as to $500 remaining due to J. G. Hayden, the clerk employed by the firm; an allowance is made in the expenses for the whole of the salaries for the whole period. Mr. Gunnell was to receive a thousand dollars a year, and the clerk five hundred. The partnership lasted four years. Six thousand dollars are allowed in the expenses, and deducted from the sales.

A balance of 111\frac{00}{100}$ for rent of the yard remains unpaid to the corporation. I am satisfied it is not included in the item of $1,329$\frac{28}{100}$, entered in the expense account for licenses and rent, the rent alone being admitted by complainants to amount to $1,387$\frac{18}{100}$, (B. 1.) It is now allowed, is added to the expenses & deducted from the sales.

23 Interest is claimed on the difference of capital. Mr. Gunnell's stock of lumber went into the concern on the 1st of May, 1845, at $6,627\frac{56}{100}$. Up to the 17 July, '45, the compl'ts had put in of their capital but $3,950; to 13th Nov., '45, $4,950; and not until 24th of August, '46, was their whole cash capital of $7,775\frac{65}{100}$ paid in. For more than a year Mr. Gunnell was in advance; but his whole capital consisted of stock, some of which, it is to be presumed, remained on hand; and it is supposed his advance would be equalized by the more active and profitable cash capital of the complainants. No interest, therefore, is allowed on Mr. Gunnell's excess. From the 24th Aug., 1846, to the 1st of May, 1849, the compl'ts were in advance $1,147\frac{29}{100}$. Interest is allowed thereon, amounting to $183\frac{52}{100}$.

It is therefore found and reported that the balance due from the defend't to the compl'ts is the sum of $3,001\frac{56}{100}$, as of the 1st May, 1849, and that this amount is due and payable over and besides the balance on the note, and for salary and rent mentioned above, the whole of which Mr. will have to pay to the respective creditors, having
24 received credit for the same in the accounts above stated and referred to.

The debts and property on hand in col. 3, G. 4, will be for equal division between the compl'ts and def't.

25th Aug't, 1852. W. REDIN, *Auditor.*

Auditor's fees, $89\frac{54}{100}$, paid by Mr. Bird.—W. REDIN.

Agreement of counsel to submit cause on auditor's report.—Filed May 31st, 1854.

BIRD ET AL. *v.* GUNNELL. } Chancery—On exceptions to auditor's report.

This case is submitted on notes by counsel, and on the aud'r's report and exhibits.

CARLISLE, *for Compl'ts.*
JOS. H. BRADLEY, *for Def't.*

It is agreed that the decision of the court may be filed in vacation, and the decree entered as of this term.

March 7, 1854. CARLISLE, *for Compl'ts.*
31 May, 1854. JOS. H. BRADLEY.

25 *Bill of revivor.—Filed June 8, 1859.*

To the honorable the judges of the circuit court of the District of Columbia, in chancery sitting:

Humbly complaining, show unto your honors, your orators, Eburn Bird, of the city of Washington, District of Columbia, survivor of Wm. Bird, the younger, administrator of all and singular the goods, chattels, and effects of William Bird, deceased, and late of the said city, and David Hepburn, of the said city, administrator of all and singular the goods, chattels, and effects of Peter Hepburn, late of the said city, deceased, that on or about the second day of August, in the year of our Lord eighteen hundred and fifty, your orators, said intestates, the said William Bird and the said Peter Hepburn, did, in their lifetime, file and exhibit in your honorable court their original bill of complaint against

a certain William H. Gunnell as the defendant thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth; and your orators further show that process duly issued against the said defendants, and he appeared and put in his answer to the said bill.

And your orators further show that, by consent of parties thereto,
26 the said cause was referred to the auditor of your honorable court, William Redin, esq., with directions to state the partnership account between the said parties; that the said auditor undertook and held the said audit, and on the twenty-seventh day of August, 1852, reported to your honorable court the results of the same, together with his conclusions thereupon, and that afterwards the said defendant filed and exhibited his exceptions to the said report of the said auditor for divers errors and mistakes therein contained, which said exceptions are undecided, and still await the determination of this honorable court.

And your orators further show that on the day of October, A. D. 1856, the said William Bird departed this life intestate, and that letters of administration on his estate were duly sued out of the orphans' court of this district by the said Eburn Bird, and William Bird, the younger. And your orators further show that the said William Bird, the younger, hath since departed this life, leaving your orator, Eburn Bird, him surviving. And your orators further show that on or about the 28th day of April, 1858, the said Peter Hepburn departed
27 this life intestate, and that letters of administration upon his estate were duly sued out of said orphans' court by your orator, David Hepburn, which said several letters of administration your orators bring here into court.

And your orators further show that the said suit and proceedings have become abated by reason of the death of the said William Bird, the older, and the said Peter Hepburn, and your orators are advised that they, as the personal representatives of the said William Bird and the said Peter Hepburn, are entitled to have the said suit and proceedings revived against the said defendant William Gunnell, and to have the said cause put in the same state and condition as the same was in previously to the death of the said William Bird and the said Peter Hepburn.

To the end therefore that the said defendant may answer the premises, and the void suit and proceedings, which so became abated as aforesaid, may stand revised and be in the same plight and condition as the same were in at the time of the death of the said William Bird and the said Peter Hepburn, or that the said defendant may show good cause to the contrary:

May it please your honors to grant unto your orators the most
28 gracious writ of subpœna to revive, issuing out of this honorable court, to be directed to the said William H. Gunnell, commanding him by a certain day to be therein named and under a certain pain to be therein limited, personally to appear before your honors in this honorable court, and then and there to show cause, if he can, why the said suit and the proceedings therein had should not stand and be revived against him and be in the same plight and condition as the same were in at the time of the abatement thereof; and further to stand to and abide by such order and decree in the premises as to your honors shall seem meet and proper.

And your orator will ever pray, &c., &c.

CARLISLE & MAURY,
Solic'tors for Compl'ts.

Answer of def't to bill of revivor.—Filed 20 *Oct.*, 1859.

The answer of William H. Gunnell to the bill of revivor of Eburn Bird, adm'r, and David Hepburn, adm'r.

This defendant, saving and reserving, &c., says, that he admits the facts stated in said bill of revivor, but he shows further to your honor that at the time the said cause was referred to the auditor of this
29 court, as appears by said report, all the books and assets of the said firm were in the hands, control, and possession of the said complainants; and he says they were and have been ever since retained by them; that this defendant offered to take and collect the same; but the said William Bird, in his lifetime, and who them in his possession, declined to let him do so except upon the terms of his being responsible for the gross amount thereof, or admitting the claims and pretensions of complainants as set up in their said bill; that since then he is informed and believes that portions of the debts reported by the auditor as unpaid have been received and collected by said William Bird in his lifetime, and are nowhere credited in this cause; that as to all the residue not so collected they are now barred by lapse of time; that he knows the larger portion of said debts so reported as unpaid by the said auditor might have been collected with reasonable diligence; and if they have been lost it is in consequence of the neglect of the said complainants and their said refusal to let this defendant have them to collect; and he submits that said complainants should be charged in an account hereafter to be stated, to be taken under the direction of this court, with all of said debts, except those which they can satisfac-
30 torily show could not have been collected by due and reasonable diligence on his part.

He further shows he is informed, and believes it to be true, that from the time the said cause was by consent submitted to the court on the written agreement filed therein, the papers in said cause were mislaid and no step taken to bring it to a hearing, nor did he know anything of its condition until he was served with a subpœna, in the month of June last, to answer the said bill of revivor; and he is informed by his counsel, who he immediately employed, that on his application at the clerk's office to see the said bill and bill of revivor, he was informed by the clerk that said papers were not there, and he did not know where they were, so that he had no opportunity to file his answer before said bill was taken for confessed, and he now asks leave to file it, not for purposes of delay, but for the ends of justice.

W. H. GUNNELL.

BRADLEY, *for Compl't.*

William Gunnell makes oath according to law that the facts stated in the foregoing answer as of his own knowledge are true, and he believes those to be true which are stated on the information of others.
31 Subscribed and sworn to this 20th day of October, A. D. 1859, before me.

CHAS. WALTER, *J. P.*

Order of reference to the auditor.—Filed 20 *Oct.*, 1859.

BIRD & HEPBURN
v.
GUNNELL. } 685.

It is ordered this 20th, 1859, that this cause be referred to the auditor

of this court to state the account between the said parties; and he will make such alternative statements thereof as may be required by either party.

By order of the court.

Test: JNO. A. SMITH, *Clk.*

32 *Filed Feb'y* 6, 1866.—*R. J. M., Clk.*

BIRD & HEPBURN *ag't* WM. H. GUNNELL. } No. 685, equity.

Further report in the above case under the order of the 20th October, 1859.

The case was originally referred to me the 6th December, 1851. After (for the reasons stated in my report) a very careful examination of the books and papers of the partnership which had subsisted between the parties, and having had the advantage of the personal explanations of both parties, I made my report on the 27th August, 1852, which is filed in the cause. I differed from both parties. The complainants claimed $17,640 43 by the statement prepared by their friends, page 21 of the report; the defendants admitted $1,158 09, but that amount only, by the statement prepared by his friends, page 25. I found $3,001 56 to be due, (page 9,) from the defendant to the complainants, as of the 1st May, 1849.

That report was submitted to the late court, upon exceptions, on the 31 May, 1854. Nothing appears to have been done.

Bird, one of the original complainants, died in 1856; Hepburn, the other, in 1858.

A bill of revivor was filed the 8th June, 1859; was answered, and on the 20 October, 1859, the cause was again referred to me, at that date, "to state the account between the parties, and such alternative statements thereof as may be required by either party."

33 Of that order I had no knowledge; and it was not brought to my notice until September, 1865.

I immediately gave notice to the counsel on both sides, and, instead of myself making the alternative statements which each required to guard against misapprehension of their views, I requested my friends each to make out his own statement. This they have kindly done; and there can be now no doubt of their views being accurately expressed and presented.

J. D. M. is the complainants' own view, and J. H. B. is the defendant's.

I have considered and examined these statements with all the attention and care which their experienced sources demand, to see if I could adopt either, and take any different view; and I have reviewed my own work in the case, performed more than 13 years ago; and, with all deference to the counsel on both sides, I take the same view of the case now as I expressed then; and respectfully report to the court the same conclusion that will be found on page 10 of that report, as my present view.

5th Feb'y, 1866. Auditor's fees, 27 90.

W. REDIN, *Auditor.*

34 *J. D. M.*

BIRD ET AL. v. GUNNELL. } In equity, No. 685.

The auditor will please state an alternative account upon the principle assumed by the compainants in the account filed by them, that is to say:

The whole capital having gone into Gunnell's hands, he is to be charged with the amount thereof		$14,403 21
And he is to be charged with the gross amount of sales, (subject to credits hereafter to be given for debts not collected)		93,471 11
Amount		$107,874 32

And he is to be credited with expenditures as follows:

Value of lumber put in by him, being the same as if cash had been put in by him & spent for lumber	$6,627 56	
Paid for lumber purchased from the partners	55,146 55	
Expenses of business	12,242 95	
Total expenditures		74,017 06
Balance, comprising the assets of the concern at dissolution		$33,857 26
Consisting of capital	14,403 21	
Profits	19,454 05	
		$33,857 26

35 Half the profits would be $9,727 02; this being credited to each of the partners, makes their shares as follows:

Bird & Hepburn—capital		$7,775 65
½ profits		9,727 02
		17,502 67
W. H. Gunnell—capital	6,627 56	
½ profits	9,727 03	
		16,354 59
Total as above		$33,867 26
Bird & Hepburn being credited with as due at dissolution		17,502 67
Are to be charged with their share of items brought into account since—		
½ lime purchased, $732 18	$366 09	
" rent unpaid, 111	55 50	
" bad debts, 5,461 56	2,730 78	
		3,152 37
		14,350 30

And to be credited with ½ of interest allowed them for excess of capital	$183 52	91 76
Showing their real share of assets		$14,442 06
On account of which they have received, by their collections and individual accounts		7,552 68
Leaving due them at date of filing bill		$6,889 38

J. D. McPHERSON,
Sol. for Compl'ts.

36 *J. H. B.*

Mr. REDIN, *Auditor, &c.:*

When Mr. McPherson and I were before you last week, in Bird & Hepburn v. Gunnell, I made a rough draft of the project of an account to be stated for the defendant, and Mr. McPherson was to have prepared one on his side. I have not seen his, & reflecting on the subject, I have prepared two accounts, which I wish to submit to you, & that you will return one, or, if you reject them, both, to the court, & withdraw that rough draft.

Account A, on the supposition that Bird and Hepburn having taken charge of all the assets at the dissolution of the copartnership, they are to be charged with all which they do not satisfactorily account for.

Total amount of purchases, (that is, cost of goods sold,) at cost price		$61,774 11
Add Hoover's ac. for time		782 18
		62,556 29
Total amount of goods sold		93,471 11
Gross excess of sales		30,914 82
Deduct expenses	$12,242 95	
Rent to be added	111	
Difference int. on capital	183 52	
		12,537 47
Profits, including capital		18,377 35
Deduct Bird & Hepburn's capital	$7,775 65	
Gunnell's ..... do	6,627 56	
		14,403 21
Profits		3,974 14
½ to each		1,987 07
Add cap		6,627 56
		8,614 63
Gunnell has rec'd only		7,886 46
Cap. & share of profits		8,614 63
Short		728 17

37 *Account B, supposing the bad & all collected debts are to be divided equally between them.*

Total of purchases, (that is, cost of goods sold,) at cost price			$61,774 11
Add Hoover's ac. for time			782 18
			62,556 29
Gross sales			93,471 11
Gross excess of sales			30,914 82
Deduct expenses	$12,242 95		
Add rent	111 00		
Diff. int. on capital	183 52		
Bad & uncollected debts, &c	5,461 56		
			17,999 03
Proceeds of business, deducting uncollected debts			12,915 79
Deduct Bird & Hepburn cap'l	$7,775 65		
Gunnell's capital	6,627 56		
			14,403 21
Loss, including uncollected debts			$1,487 42
½ to each			743 71
Gunnell's capital	$6,627 56		
Deduct his half of loss	743 71		
	5,883 85		
Collected by him	7,886 46		
	2,002 61	Over	2,002 61
Bird & Hepburn cap'l	$7,775 65		
Deduct their ½ loss	743 71		
	7,031 94		
Collected by them	7,552 68	Over	520 74
			2,523 85
½ to each			1,261 92
Gunnell has collected			2,002 61
Gunnell owes			740 69

38 *Verification of ac. B.*

The proceeds of the business, allowing for all bad and uncollected debts, is		$12,915 79
Gunnell has collected	$7,886 46	
Bird & Hepburn	7,552 68	
		15,439 14
They have therefore to account for this sum		2,523 35

In addition to the $12,915 79, and thus it appears there was a profit.

Capital stock		14,403 21
Collections		15,439 14
Profit		1,036 93
		5,18 46
Hepburn & Bird, cap'l	7,775 65	
½ profits	518 46	
		8,293 86
They have collected	7,552 68	
Add from Gunnell	740 69	
		8,293 37
Gunnell cap	6,667 56	
Half profits	518 21	
		7,145 87
He has collected	7,886 46	
Less paid as above	740 69	
		7,145 87

Very respectfully,

JOS. H. BRADLEY,
Sol. for Def't.

W. REDIN, Esq'r, *Auditor, &c.* 2 Oct., '65.

39 *Exceptions by complainant to report of auditor.—Filed Mar.* 30, 1866

In the supreme court of the Dist. Col.

BIRD & HEPBURN
v.
WM. H. GUNNELL. } Equity docket 5, No. 685.

The complainant excepts to the auditor's report, in this, (Report, p. 8,) that the auditor, in ascertaining the profits of the business conducted by the defendant, deducts from his gross sales		$93,471 11
His purchases, expenses, & bad debts		73,877 76
And from the difference		19,593 35
Further and erroneously deducted the capital, contributed by the partners		14,403 21
Leaving for profits only		$5,190 14

But the complainant admits that the auditor has erroneously excluded from the amount of purchases the value of the capital contributed in lumber, $6,627 56, which should be treated as if it had been contributed in cash, and then expended for lumber.

The complainant corrects the auditor's report thus:

Gross sales of merchandise	$93,471 11

Purchases, expenses, and bad debts.....	$73,877 76	
Capital contributed in lumber, considered as if contributed in cash, and expended in lumber	6,627 56	
		$80,505 32
Nett profit.....		$12,965 79

JNO. D. McPHERSON,
Sol'r for Compl'ts.

MARCH 30, 1866.

40 The complainant claims $6,889 38, with interest from the date of filing the bill.—J. D. McP.

Exceptions by defendant to report of the auditor.—Filed Mar. 30, 1866.

HEPBURN & BIRD, ADMINISTRATOR, &c.,
vs.
WM. H. GUNNELL.

The defendant hereby excepts to the report of the auditor heretofore filed in this cause, and for cause of exception shows that he has not credited the defendant with capital invested by him in said business; and second, that he hath not charged complainants with the assets of the partnership which came to their hands, and for which they have failed to account.

30 March, 1866.

JOS. H. BRADLEY, *for Def't.*

It is agreed that the foregoing be filed as of 30th March, 1866, in place of the defendant's exceptions then filed, and now not found.

JNO. D. McPHERSON,
For Compl'ts.

41 *Stipulation to submit the cause for decree.—Filed June* 13, 1866.

In the supreme court of the District of Columbia.

HEPBURN, ADM'R,
v.
W. H. GUNNELL. } Eq. doc. 5, No. 685.

We agree that this cause be submitted for final decree upon the bills, answers, auditor's reports, & exceptions, including the accounts filed by the respective parties showing their claims attached to the auditor's last report.

JNO. D. McPHERSON,
Pr. for Compl'ts.
JOS. H. BRADLEY,
Sol'r for Deft.

Decree at special term.—Filed June 16, 1866.

In the supreme court of the District of Columbia.

EBURN BIRD & D. HEPBURN, ADM'R, &c.,
v.
WM. H. GUNNELL. } In equity, docket 5, No. 685.

This cause standing ready for hearing, and being submitted by

agreement of counsel without argument, and the proceedings
41 read and considered, it is thereupon, this 16th day of June, in the year 1866, by the court, ordered, adjudged, and decreed that the said defendant pay, or bring into this court to be paid, unto the complainant, the sum of three thousand and one dollars and fifty-six cents, ($3,001$\frac{56}{100}$,) with interest thereon from the 1st day of May, 1849, until paid or brought in as aforesaid, together with the complainants' costs of this suit to be taxed by the clerk.

By order of the court.

Order granting compl'ts' prayer for appeal to gen'l term.—Filed July 16, '66.

In the supreme court of the District of Columbia.

BIRD & HEPBURN *vs.* W. H. GUNNELL. } In equity, doc. 5, No. 685.

The compl'ts in this cause pray an appeal to the court in general term, from the decree made in this cause at the June term, 1866, confirming the report of the auditor, and the said prayer is granted accordingly this 16th day of July, 1866.

By order of the court.

42 *Order granting prayer of defendant for appeal to gen. term.—Filed July 16, 1866.*

BIRD & HEPBURN *vs.* GUNNELL. } In equity, No. 685.

The defendant in the above cause prays an appeal to the court in general term from the decree heretofore made therein confirming the report of the auditor made at the June term of the said court, 1866, and the said prayer is granted accordingly this 16th day of July, 1866.

By order of the court.

PROCEEDINGS BEFORE GENERAL TERM.

43 *Decree gen. term, re-reference to auditor to restate account.—Filed Nov'r 20, 1866.*

BIRD & HEPBURN *vs.* GUNNELL. } In equity, No. 685.

This cause coming on to be heard on appeal, and it being suggested that there may be inaccuracies in the report of the auditor or the statements thereto annexed, and the court not having sufficient advice thereon:

It is, this 20th day of November, 1866, ordered that the said report be referred to the auditor to revise and restate the account and report to this court; and that the further hearing be postponed till the coming in of said report; and that the decree heretofore rendered in this cause stand till the further order of the court.

44 *Auditor's report under reference from gen. term.—Filed Feb'y* 11, 1867.

BIRD & HEPBURN
vs.
GUNNELL. } 685, equity.

Under the reference of this cause to me to revise and restate the account between the parties I have examined the reports of the late auditor, the statements of the pretentions of the parties filed with him, and the printed briefs recently filed by Mr. McPherson for complainants, and Mr. Bradley for the defendant.

And I have come to the conclusion that the late auditor was correct in his conclusions, and the counsel on both sides in error.

The partnership commenced with a contribution by the defendant, in lumber, valued at $6,627 56, and by the complainants, in money, $7,775 65, to the common partnership stock or capital. But the whole fund is to be treated as of one kind; for undoubtedly the money was invested in lumber to be resold, and the lumber was converted into money to be reinvested and go through the same process. In other words, both the money and the lumber were applied to new purchases and form a part of their cost.

45 In order to ascertain the clear profits of the business, there must be deducted from the actual receipts the actual payments for lumber purchased, the expenses and losses, and finally the original capital contributed by the parties.

Proceeding then to examine the complainants' statement—page 2 of brief 2—it seems to me that his error consists in deducting the $6,627 56 of lumber, contributed by Gunnell, in the wrong place, that is, as cost, and not deducting from the receipts the capital contributed by Bird & Hepburn at all; the consequence of which is that the amount of the latter is included in the balance of receipts as profits for equal division, and in the final settlement they are to draw out the whole of their capital, and their half of the amount over again, as half profits.

It is agreed that the actual purchases of lumber from third persons amounted to $55,878 73. Whence did the purchase-money proceed? Doubtless in part from the cash contribution by Bird & Hepburn, and [and] also the proceeds of Gunnell's lumber. In fact, the purchases during the first year amounted to sufficient to absorb both at the

46 cost valuation of the lumber, viz., to the sum of $15,848 25. The partnership lasted four years; the original stock of lumber was sold and turned over repeatedly. These sales and profits, as far as appears, furnished the whole sum of $55,878 73. It does not appear that this amount of lumber was purchased in addition to that contributed by Gunnell, or that any part of its cost was contributed by either partner in addition to the original capital. I take it, therefore, that the lumber and cash of the original capital were applied to the purchase of new lumber, and went to make up and form a part of the above sum of $55,878 73, and the true computation is to deduct this and the losses & expenses from the receipts, and the balance is the profit realised on the sale of Gunnell's & the new lumber. Then, out of this profit, return to each party the capital put in by him, and the balance will be the clear profit to be equally divided; and this is the principle of Mr. Redin's statement.

McPherson, however, adds the lumber of Gunnell to the purchases, & deducts it, as cost, from the receipts, and calls the whole balance

profits; but does not deduct the amount of complainants' capital. He thus swells the profits by an amount equivalent to complainants'
47 contribution to the common capital. He ought either to have considered Gunnell's lumber as included in the amount of purchases, $55,878 73, and not to be added thereto, or he ought to have deducted the amount of complainants' capital from the receipts, also treating that as lumber put in by them, which it virtually was. The result would be the same as by omitting both amounts from the item of cost and subsequently deducting them as capital. This error of Mr. McPherson's, as I conceive it to be, runs through the whole of his brief, as he throughout assumes the nett profits to $12,965 79; which amount he arrives at by deducting only one party's capital from the receipts.

Mr. Bradley, I think, was equally in error in his original statement filed with the auditor. He proceeds to correct Mr. McPherson's error by charging against the balance of profits arrived at by him, the whole capital contributed by both sides, $14,403 21, by which he would shew a loss of $1,487 42; whereas Mr. McPherson's balance had been arrived at by already deducting once the capital contributed by Gunnell, and consequently in Mr. Bradley's statement it is deducted twice. He
48 could have corrected the error by deducting from Mr. McPherson's balance the exact amount of capital contributed by complainants, and would thus have reached the identical result arrived at by the late auditor.

Mr. Bradley, in his printed brief, excepts to the auditor's omission to do precisely what Mr. McPherson did, as I think, erroneously; that is, to add Gunnell's lumber to the item of cost, to be deducted as such from the receipts. If I am right in my view, he did allow it in the item of $55,146 55, and it was not an item proper to be added to that.

Mr. Bradley's view may be tested thus: Laying out of view the losses and expenses, then the actual payments must be deducted from the receipts in order to ascertain how much of the latter remains on hand. The payments must be set off against the receipts, and the amount of the former struck from both sides of the account. But against the receipts from the sales of Gunnell's lumber what is to be set off as cost? Nothing was paid for it by the partnership, and when it is sold the entire proceeds remain on hand. They form a part, doubtless, of the receipts, $93,471 11, but the value of it as put in by Gunnell, is not to be deducted as cost, for it cost the firm nothing. It is true that it
49 is to be deducted from the gross receipts and returned to Gunnell as his contribution to the capital before his share of the clear profits can be reached, but it is not to be deducted first as cost, and afterward again as capital. It can be stated as if the partners had owned nothing, but had borrowed the whole capital. Then deduct losses and expenses, and cash paid for lumber, from the total receipts, and we have the profit realised on Gunnell's lumber, and the other lumber bought and sold. Then deduct the amount of capital borrowed and to be returned from these gross profits, and we have the clear profits of the business.

Another mode of testing it will be to suppose the whole capital to have been lumber, which it was virtually, because the cash was converted into lumber; and to suppose the purchases of other lumber to have been made on credit, to the amount of $55,878 73; then suppose the whole to have been sold in a lump for $93,471 11, what is to be paid for its cost? Clearly, only the above item of $55,878 73, and not that in addition to the value of Gunnell's lumber, or of the whole capital.

Or, again, suppose the complainants' cash to have been applied,

50 and the rest of the lumber, $48,103 08, to have been bought on credit. The whole, both Gunnell's and the new lumber, being then sold for $93,471 11, what remains to be paid as cost? Clearly, only the $48,103 08, making the whole cost as above, $55,878 73. Or in other words, at the winding up the assetts consist of the proceeds of Gunnell's lumber, clear of all cost, and of the proceeds of the other lumber, less the cost of purchasing it, and expenses and losses of business.

In the course of four years the parties received from sales		$93,471 11
But of this they paid out, from time to time, for lumber, &c	$55,878 73	
For expenses, rent, &c	12,537 47	
& lost in bad debts, &c	5,461 46	72,877 76
So that they had left in hand		19,593 35
Out of this each partner was entitled, first, to receive back his capital, thus:		
Bird & Hepburn	$7,775 65	
Gunnell	6,627 56	14,403 21
Leaving a bal'e of clear profit of		5,190 14

The amount of nett profit was the only question in controversy before the auditor. It seems to have been assumed that if his statement of the clear profits was correct, the account between the partners,
51 upon the materials before him, was corretly stated, shewing a balance due to complainants of $3,001 56.

Resp't. submitted.

WALTER S. COX, *Aud'r.*

FEB'Y 7TH, 1867.

Aud'r's fee, $18 66.

Filed Feb'y 11, '67.

HEPBURN'S ADM'R & BIRD'S ADM'R
vs.
WILLIAM H. GUNNELL.

It is agreed hereby that the exceptions heretofore filed in this cause on the 30th March, 1866, by complainants and defendant, respectively, stand as exceptions to the report made by W. S. Cox, esq., made in general term, 11 Feb'y, 1867.

JNO. D. McPHERSON,
For Compl'ts.
JOS. H. BRADLEY
For Def't.

52 *Petition of administrator de bonis non of Wm. Bird for leave to prosecute suit, &c.—Filed Feb'y 8th,* 1868.

BIRD & HEPBURN
vs.
W. H. GUNNELL.

And now comes John H. Bird, administrator de bonis non of Wm. H.

Bird, one of the original parties, complainant in this cause, and shows to the court here that, after the filing of the said bill of complaint, the said William H. Bird died, and letters of administration on his estate were granted to one Eburn Bird, who was, by further proceedings, made a party to this cause in the place of the said William Bird, and that pending the appeal before this court in general term the said Eburn Bird has died, and letters de bonis non on the estate of the said William Bird have been granted to John H. Bird by the orphans' court of the District of Columbia, and the said John H. Bird prays that the said cause be reviewed in the name of the said John H. Bird, and that he be admitted to prosecute the same; "and it (is) ordered accordingly."

Decree gen. term affirming decree at special term.—Filed Feb'y 8th, 1868.

DAVID HEPBURN, ADM'R OF PETER HEPBURN,
vs.
WILLIAM H. GUNNELL.

53 This cause coming on further to be heard upon the cross-appeal from the decree made at special term, and upon the report of the auditor, filed on the 11th day of February, 1867, pursuant to the order of this court of November (21,) 1866, and upon the exceptions of the parties, complainants and defendant, respectively, to the same report, and all and singular the proceedings heretofore had in this cause being read and considered, and being argued by counsel on both sides; it is now, this 8th day of February, A. D. 1868, by the court, ordered, adjudged, and decreed that the decree in this cause made at special term be modified and stand as follows: That all the exceptions to the report of William Redin, esq., auditor, be, and they are hereby, overruled, and the said auditor's report be in all things confirmed; and that the defendant pay to the complainants the sum of three thousand and one dollars and fifty-six cents, with interest from the 1st day of May, in the year eighteen hundred and forty-nine, and the cost of this suit, to be taxed by the clerk.

54 *Order gen. term allowing appeal to Supreme Court by complainant.—Appeal filed Feb'y 8th*, 1868.

In the supreme court of the District of Columbia.

BIRD & HEPBURN
vs.
W. H. GUNNELL.

The solicitor of the complainants prays the court to allow an appeal from the decree in this cause made this 8th day of Feb'y, 1868, to the Supreme Court of the United States.

Order gen. term allowing defendant's appeal from the decree of Feb'y 8th, 1868.—*Appeal filed Feb'y 8th*, 1868.

BIRD & HEPBURN
vs.
GUNNELL. } In general term.

On motion by solicitor by the defendant, leave is granted by the defendant to withdraw his motion for an appeal heretofore made in this cause, and that he have a new appeal upon the decree passed herein on this 8th day February, A. D. 1868.

55 *Bond for appeal to Sup. C't U. S.—Filed Nov.* 14, 1868.

Know all men by these presents that we, William H. Gunnell, Zephramiah Jones, and John B. Clagett, all of Washington County, in the District of Columbia, are held and firmly bound to David Hepburn, administrator of Peter Hepburn, deceased, in the full and just sum of twelve thousand dollars, in current money of the United States, to be paid to the said David Hepburn, his executors, administrators, or assigns; to which payment, well and truly to be made, we hereby bind ourselves, and each and every of us, ours, and each and every of our heirs, executors, and administrators, jointly and severally, sealed with our seals, and dated this twelfth day of November, eighteen hundred and sixty-eight.

Whereas in a certain cause lately pending in the supreme court of the District of Columbia, on the equity side thereof, wherein the said David Hepburn, administrator of Peter Hepburn, late of said county, deceased, was complainant, and the said William H. Gunnell was defendant, a decree was entered on the eighth day of February, eighteen hundred and sixty-eight, against the said William H. Gunnell, from which he hath prayed an appeal to the Supreme Court of the United States, and
56 the same hath been allowed:

Now, the condition of the above obligation is such that if the said William H. Gunnell shall and do well and truly prosecute the said appeal according to law, and, in case the same shall be decided against him, shall and do well and truly pay the debt therein decreed against him, and all cost and damages which may be awarded against him by the said Supreme Court of the United States, or which shall or may be sustained by the said David Hepburn, administrator as aforesaid, by or by reason of the said appeal, then this obligation to be void; otherwise to be and remain in full force and virtue in law.

W. H. GUNNELL. [SEAL.]
Z. JONES. [SEAL.]
JNO. B. CLAGETT. [SEAL.]

Witness for W. H. Gunnell & Z. Jones—the name of Zephaniah Jones being first substituted in place of Barruch Hall—
P. M. JONES.
Witness for W. B. Clagett—
E. L. MOULTON.
Witness for Wm. H. G., Z. J.—
P. M. JONES.

(Indorsed:) Approved:

ANDREW WYLIE.

I certify that the sureties in the foregoing bond are good.

It is agreed that this bond shall be taken and received to have the same force and effect, by writ of supersedeas and stay of execution, and in all other respects as though the same had been filed within ten
57 days after the rendition of the decree in this cause, and in all other respects; and that the bond heretofore filed in this cause by said defendant be delivered up to him to be cancelled.

Defendant's appeal bond.—Appeal bond, filed Ap'l 9th, 1869.

In the supreme court of the District of Columbia.

JOHN H. BIRD, ADMINISTRATOR D. B. N. OF William Bird, and David Hepburn, administrator of Peter Hepburn, appellants,
vs.
WILLIAM H. GUNNELL, APPELLEE.
} In equity, No. 685.

Know all men by these presents that we, John H. Bird and David Hepburn as principals, and P. L. Padgett as surety, are bound unto the above-named William H. Gunnell in the sum of two hundred and fifty ($250) dollars, to be paid to the said William H. Gunnell, his executors and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these
58 presents, sealed with our seals and dated this 3d day of December, 1868.

Whereas the above-named appellants have prosecuted their appeal to the Supreme Court of the United States to reverse the decree of the supreme court of the District of Columbia, rendered in the above suit:

Now, therefore, the condition of this obligation is, that if the above-named appellants shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) DAVID HEPBURN. [SEAL.]
" JOHN H. BIRD. [SEAL.]
" C. L. PADGETT. [SEAL.]

Sealed and delivered in the presence of—

Approved:

D. K. CARTTER, *Ch'f Justice.*

59 *Certificate of clerk.*

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals of which the foregoing writings are true and complete copies are on file and of record in the clerk's office of said court, and that said originals together constitute the record of proceedings of said court in a certain cause therein depending, and lately decided, entitled "William Bird & Peter Hepburn vs. William H. Gunnell, 685, eq. rules 5."

In testimony whereof I hereto subscribe my name and affix the seal of said court the 9th April, 1869.

[SEAL.] R. J. MEIGS, *Clerk, &c.*

Costs of record, $26 95, paid by J. H. Bradley, sr.

R. J. MEIGS, *Clerk.*

60 In the supreme court of the District of Columbia.

Proceedings before the supreme court of the District of Columbia, in general term, commencing on the third Monday, 20th day of January, 1868.

MONDAY, *January 20th*, 1868.

Term commenced by proclamation by the marshal, by order of the court. Present, Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

SATURDAY, *February 8th*, 1868.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

BIRD & HEPBURN, *vs.* W. H. GUNNELL. } 685, equity docket 5.

And now comes John H. Bird, administrator de bonis non of William H. Bird, one of the original parties complainant in this cause,
61 and shows to the court here that, after the filing ot the said bill of complaint, the said William H. Bird died, and letters of administration on his estate were granted to one Eburn Bird, who was, by proper proceedings, made a party to this cause in the place of the said William Bird; and that pending the appeal before this court in general term, the said Eburn Bird has died, and letters of administration de bonis non on the estate of the said William Bird have been granted to the said John H. Bird by the orphans' court of the District of Columbia; and the said John H. Bird prays that the said cause be revived in his name, and that he be admitted to prosecute the same. And it is ordered accordingly.

Whereupon, this cause coming on to be further heard upon the cross-appeal from the decree made at the special term, and upon the report of the auditor filed on the 11th day of February, 1867, pursuant to the order of this court of November 21, 1866, and upon the exceptions
62 of the parties, complainant and defendant, respectively, to the said report; and all and singular the proceedings heretofore had in this cause being read and considered, and being argued by counsel on both sides, it is this day, by the court, ordered, adjudged, and decreed that the decree in this cause made at special term be modified and stand as follows: That all the exceptions to report of William Redin, esq'r. be, and they are hereby, overruled, and the said auditor's report be in all things confirmed; and that the defendant pay to the complainant the sum of three thousand and one dollars and fifty-six cents, with interest from the first day of May, in the year eighteen hundred and forty-nine; and that the costs of this suit be taxed by the clerk.

And on motion of the defendant, by his solicitor, leave is granted him to withdraw his motion for an appeal heretofore made in this cause; and it is ordered that he have a new appeal from the decree this day pronounced as aforesaid.

63 And thereupon the solicitor of the complainant prays an appeal in his behalf from said decree to the Supreme Court of the United States, and the same is allowed.

By order of the court.

A true copy from the minutes of the general term of said court.

[SEAL.] R. J. MEIGS, *Clerk.*

In the Supreme Court of the United States.

DAVID HEPBURN, ADMINISTRATOR OF PETER Hepburn, deceased, and John H. Bird, administrator d. b. n. of William Bird, deceased,
v.
WILLIAM H. GUNNELL.

In this cause it is stipulated and agreed that the record in this cause be amended by substituting the foregoing transcript of proceedings in the supreme court of the District of Columbia, as and for the corresponding proceedings of said court in said cause, on the 8 day of
64 February, 1868, with the same effect as if the same had been certified to this court on certiorari.

JNO. D. McPHERSON,
Sol'r f'r Bird & Hepburn.
JOS. H. BRADLEY,
Sol'r f'r Wm. H. Gunnell.

(Indorsed:) Supreme Court U. S. 1869, Dec. term. No. 222. Wm. H. Gunnell, app't, vs. Bird, adm'r, &c., & al. Addition to record & stipulation of counsel.
Filed 31 January, 1870.

(Indorsement on cover:) No. 222. William H. Gunnell, appellant, vs. John H. Bird, adm'r d. b. n. of William Bird, dec'd, & David Hepburn, adm'r of Peter Hepburn, dec'd. Dist. of Columbia sup. court.
Filed 14th April, 1869.

Supreme Court of the United States.

WILLIAM A. GUNNELL

vs.

JNO. A. BIRD, ADM'R, ET AL.

No. 222. Appeal.

JNO. A. BIRD, ADM'R, ET. AL., APPELLANT,

vs.

WILLIAM A. GUNNELL.

No. . Cross Appeal.

Powell, Glaser & Co., Prs., 622 F St.

Supreme Court of the United States.

—:o:—

WILLIAM H. GUNNELL
vs.
JNO. A. BIRD, Adm'r, ET AL. } No. 222. Appeal.

JNO. A. BIRD, Adm'r, ET AL.,
Appellant,
vs.
WILLIAM A. GUNNELL. } No. . Cross Appeal.

—:o:—

This is an appeal from a decree of the Supreme Court of the District of Columbia, in equity.

THE CASE.

The bill was filed in August, 1850, by William Bird and Peter Hepburn against William H. Gunnell, to obtain a settlement of partnership accounts.

Gunnell had been engaged in the lumber business and had a considerable stock on hand, when Bird and Hepburn became silent partners, putting in a cash capital. At the end of about four years the partnership was dissolved, Bird & Hepburn took the books and the remnant of stock, some collections were made by both parties, and then the bill was filed.

Pending the suit, both the complainants died, and their administrators have become parties.

Upon reference of the cause to the Auditor in 1852, all the facts were settled by the agreement and admission of the parties before him, and are stated in his report, (Rec. p. 5,) as follows:

"Both parties have agreed that the following facts are

to be taken as established, viz: the business—the lumber business—in which Mr. Gunnell had been engaged, was to be under his care and management. His stock was put in as his advance, at the value of $6,627 56. Bird and Hepburn advanced in cash, $7,775 65. The whole capital went into Mr. Gunnell's hands. The expenditure for lumber and other articles purchased of third persons for the business during the four years, was $55,146 55; the expenses of conducting it, $12,242 95; the aggregate sales made of every description, $93,471 11. They were to share equally; and profits were made."

"At the termination of the partnership the stock, the books and the unsettled accounts went into Bird & Hepburn's hands." Record, p. 5.

* * * * * * *

"The Schedule G 3, was filed by the complainants as containing a correct representation of the debts outstanding, and of the property on hand at the termination of the partnership. Upon comparing that list with the books, it was found inaccurate in several particulars, and Schedule G 4, has been compiled from that list, from the books and the admissions of the parties during the investigations before the auditor."

"Column 3, of that schedule, shows the bad and uncollected debts at this time to amount to $5,461 56. In column 2, the amount collected by the complainants since the dissolution of the partnership, and of their individual accounts on the books, is shown to be $7,552 68. And in column 1, the defendant's collections from the same list and the debts in it chargeable to him on his individual account, are stated and shown to amount to $7,886 46." Record, p. 8.

All the facts material to be considered, are comprised in these few lines; the results of the whole accounting are

contained in these items; and the whole controversy, which has now lasted twenty years, is, simply: What, if anything, on these facts, is the amount due the complainants?

It was agreed that by adding one-half the profits to their capital, and deducting the amount reported by the Auditor as collected by them, the balance due them would be arrived at.

The controversy, then, at that time, turned solely on the amount of the profits.

Taking the figures *then* agreed on—

The complainants stated the profit to be....	$19,454 05
The defendant stated the profit to be.....	5,050 05
The Auditor stated the profit to be.....	11,578 40

The complainants arrive at the profit thus:

Total sales of lumber.....		$93,471 11
From which deduct:		
Total *cost* of lumber.....	$61,774 11	
Expenses of conducting business	12,242 95	
		74,017 06
Balance—Profit		$19,454 05

The defendant stated it thus:

Total sales.....		$93,471 11
Total *cost* of lumber.....	$61,774 11	
Expenses of business.....	12,242 95	
		74,017 06
Balance—as above.....		$19,454 05
Deduct capital.....		14,403 21
Balance [which defendant calls profit].....		$5,050 84

The Auditor stated it thus:

Total sales		$93,471 11
Purchases, [not *cost*] of lumber.	$55,146 55	
Expenses of business	12,242 95	
		$67,389 50
		$25,081 61
Deduct capital		14,403 21
Balance—Profits		$11,678 40

Thus the complainants and defendant agreed that, to ascertain profits, the total cost of lumber should be deducted from the sales. But the defendant insisted, and the complainants denied, that the capital should also be deducted.

A correction, in a subsequent part of the report, of the figures first agreed upon by the parties reduces the profits by the following sums. Auditor's report, Record, pp. 8, 9.

Paid for merchandize—add to outlay	$732 18
Bad debts—deduct from sales	5,461 56
Rent, &c.—add to expenses	294 52
	$6,488 26

So that the nett profits *realized* according to the respective accounts, are:

By complainants', $19,454 05, less $6,488 26.	$12,965 79
By Auditor's, $11,678 40, less $6,488 26	5,190 14
By defendant's, $5,050 84, less $6,488 26, a loss of	1,437 42

For convenience of reference we here recapitulate the figures as corrected:

Gross sales		$93,471 11	
Less bad debts		5,461 56	
Amount of cash realized from sales			$88,009 55
Cost of lumber put in		$6,627 56	
Cost of lumber bought	$55,146 55		
Add thereto	732 18		
Total cost of lumber bought		55,878 73	
Total cost of lumber		$62,506 29	
Expenses	$12,242 95		
Add	294 52		
Total expenses		$12,537 47	
Total outlay			75,043 76
Balance, which complainants call nett profit.			$12,965 79

Defendant's Account. [*B, condensed. Rec. p.* 16.]

Cash from sales		$88,009 55
Cost of lumber	$62,506 29	
Expenses	12,537 47	
		$85,043 76
Balance of cash from sales		$12,965 79
Capital to be deducted		14,403 21
Loss		$1,437 42

[Note.—The defendant makes this $1,487 42, but he makes an error of $50 in Hoover's account, stating $782 instead of $732.]

Auditor's Account

Cash from sales		$88,009 55
Purchases only	$55,878 73	
Expenses	12,537 47	
		68,416 20
Balance of cash from sales		$19,593 35
Deduct capital		14,403 21
Profits		$5,190 14

The auditor then completed the account thus:

Bird & Hepburn's capital	$7,775 65
One half the profits, $5,190 14	2,595 07
Interest	183 52
Total to B. & H.'s credit	$10,554 74
Amount collected by them, and their bill for lumber bought from the firm	7,552 68
And reported as due complainants	$3,001 56

He also reported that the bad debts and stock on hand should be divided between the parties.

Both parties excepted, (Record, 17, 18.) the court overruled all exceptions, and confirmed the auditor's report, and made a decree for payment of $3,001 56, Record, p. 18.

Both parties appealed to the General Term, and the court referred the cause to the auditor, Mr. Cox, to revise the former report. He fell into the same error—*deducting the capital from the sales in order to arrive at the profits,* and of course, arrived at the same result. Record, p. 22.

Both parties excepted. But the court confirmed the

report, and made a decree for the same amount. Record, p. 26.

Both parties appealed in open court, to the Supreme Court of the United States. Record, p. 26.

The following questions are raised by the exceptions. Record, p. 17, 18.

1. *For the Defendant.* Whether the entire cost of the lumber (in addition to the capital) should not be deducted from the sales in order to arrive at the profits.

2. *For the Complainants.* Whether the capital should be deducted from the sales to arrive at the profits.

3. Whether the complainants should be charged with all the bad debts.

ARGUMENT.

I.

The principle assumed by both the Auditor and the defendant is that the *capital* must be deducted from the *sales*, in order to ascertain the *profits*.

The Auditor states the rule thus: "But the real profits of the business appears to him, (the auditor,) to have been $5,190 14, *and the correct mode of stating the account to be,*

First, to charge the entire sales.

Then deduct the expenditures, first for actual purchases, and second, for the expenses of carrying on the business.

Next, the bad or outstanding debts.

And then the original capital of both parties.

And the balance would be profit to be equally divided between them. Auditor's report, Rec. p. 6.

We deny the correctness of this principle. We deny that the capital is any element whatever in the computation of profits.

We assert that the only elements in the computation of profits are: 1, the cost of the merchandise; and 2d, the expenses of holding the merchandise, and converting it into money.

1st ILLUSTRATION.

If I take $5 in my hand, and buy a barrel of flour for that price, and, without moving it, instantly sell it for $6, what profit do I make? Obviously, $1. But the Auditor and defendant say no: I have lost $4. They say:

From the total sales		$6
Must be deducted purchases	$5	
Expenses	0	
Bad debts	0	
Capital	5	
	—	10
Then there inevitably results a nett loss of		$4

Now, this is precisely the principle on which the Auditor has stated the account in the case at bar, and the error is as gross in the one case as in the other. If the Auditor's rule is correct, it must apply to every possible case. If, in the case at bar, it is proper to deduct the amount of capital from the amount of sales, in order to ascertain the profits, then it must be proper in every case to use the same process. In no conceivable case can it be otherwise.

2d ILLUSTRATION.

Let us try another case under the Auditor's rule:

A and B put in each $3,000 making $6,000, to deal in flour. They bought and paid for 1000 barrels at $5 making $5,000; they stored it at an expense of $1000; they sold it for $9000, but $1000 of the price was never paid; they collected only $8000.

Now, apply the Auditor's rule.

"First charge the entire sales"	$9,000
"Then deduct the expenditures:"	
"First, for actual purchases"	5,000

Residue	$4,000
"And second, expenses of carrying on the business"	1,000
Residue	$3,000
"Next, the bad or outstanding debts"	1,000
Residue	$2,000
"And then the original capital of both partners"	6,000
No residue, but a loss of	$4,000

3d Illustration.

But suppose C and D, without any capital at all, buy, on their personal credit, $5,000 worth of flour, store it at an expense of $1,000, sell it for $9,000, of which they lose, by a bad debt, $1,000; then by the Auditor's rule they make $2,000 profit. Thus:

Sales		$9,000
Purchases	$5,000	
Expenses	1,000	
Bad debt	1,000	
Capital	none	
		7,000
Nett profit		$2,000

4th Illustration.

In the case at bar, let us suppose, that immediately after the partnership was formed and the money and lumber put in, the parties had disagreed and determined to wind up the concern. They sold their stock at auction, and realized the estimated value and no more. The auction bill was $100. This is a very suppposable case, one to which the ordinary rules of arithmetic ought to apply.

How would the account stand, according to the Auditor's mode of stating it? Thus:

Total sales		$6,627 56
Purchases	none	
Expenses	$100 00	
Bad debts	none	
Capital	14,403 21	
		14,504 21
Net loss		$7,875 65

In the cases we have supposed, the error is obvious. The result is simply absurd. The amount of error is too great to be concealed, but in the case at bar, the original capital bears so small a proportion to the aggregate business of five years, that it does not produce any striking and obvious distortion of the truth.

5th ILLUSTRATION.

Let us test the Auditor's calculations. How much cash went into the concern?

First, there was B. and H.'s cash capital		$7,775 65
Then, there was the amount paid by customers for lumber		88,009 55
Total cash received		$95,785 20
What became of it?		
There was paid in cash for lumber	$55,878 53	
And for expenses	12,537 47	
		68,416 20
Nothing more was ever paid, and there ought to be a balance to be distributed of		$27,369 00
And it ought to be distributed thus:		
To pay back capital	$14,403 21	
To divide as profits, as above	12,965 79	
		27,369 00

6th Illustration.

Or let us state an account with Gunnell as agent.

W. H. Gunnell, Agent,

In account with Bird, Hepburn & Co., *Dr.*

To cash put in by B. & H.		$7,775 65
To lumber put in by G.		6,627 56
To cash received from customers		88,009 55
Total of debits		$102,412 76

Contra Cr.

By this amount received in lumber as cash, and therefore, to be treated as if received in cash and expended for lumber	$6,627 56	
By this amount paid for lumber	55,878 73	
By this amount paid for expenses	12,537 47	
Total outlay		$75,043 76
Balance as before, to be handed over by the agent to the firm		$27,369 00

7th Illustration.

Suppose Gunnell had kept all the proceeds of sales, paid out nothing whatever but gone in debt for lumber and expenses: and then on the termination of the partnership brought in the proceeds to settle with his partners and creditors.

He would have had on hand:

Bird & Hepburn's money	$7,775 65	
Cash realized from sales	88,009 55	
		$95,785 20

		$95,785 20
He would have owed:		
For lumber	$55,878 73	
For expenses	12,537 47	
Total debts		68,416 20
Net assets		$27,369 00
Consisting of capital		$14,403 21
Profits as before		12,965 79
Net assets		27,369 00

[~~See note at end of brief.~~]

II.

Now, let us examine the Auditor's statements on page 7 of the record.

There, Gunnell is charged only with the amount derived from sales, although the Auditor expressly states that Bird & Hepburn paid to him $7,775 65. That snm is nowhere charged to him. He is charged, we repeat, with but a single sum, the proceeds of sales. The Auditor says: "The whole capital went into Mr. Gunnell's hands;" and yet he does not charge him with a dollar of it. It is true the auditor says Gunnel expended it, but he credits it when expended—credits it when paid out, but don't charge it when received.

He says again: "An obvious test would be to consider the defendant merely as 'an agent;'" and then having just said, "the whole capital went into his hands," he does not charge him with it or any of it. If we put money into an agent's hands do we not charge him with it? The Auditor does no such thing: he credits

him with every dollar expended—out of that very capital—to buy lumber—but does not hold him responsible for the very money given him to buy it.

He allows Gunnell to reimburse himself out of the proceeds of his sales for all the money paid for lumber, although Bird & Hepburn had given him $7,775 65 in advance,to buy lumber with.

III.

The Auditor propounds this postulate; and we notice it because we think he may have been misled by it:

"There can be no doubt that before profit can be ascertained, the original capital must be deducted from the nett assets on hand at the termination of the business." Record, p. 6.

Now, whether the Auditor intended this as a general rule applicable to all cases, or a special rule for this case, it is equally erroneous.

In the case at bar, "the assets on hand at the termination of the business" consisted of some lumber and some debts—the good debts had been divided before the account was taken, and the bad the Auditor reported should be divided between the parties.

And he did not apply the principle to this case at all, for he deducted the capital, not from the assets, but from the gross sales reported.

By assets we understand some fund in hand subject to pay debts, or to be distributed.

In this case the Auditor does not bring the residue of assets into the account at all, but distributes them in kind.

It is possible, however, that the Auditor conceived the gross sales to be assets. We say this only, because he

deducted the capital from these sales after saying it should be deducted from assets.

Let us suppose then, the gross sales realized, to have been the assets, which we may do by supposing Gunnell to have made all payments out of his own pocket and the cash capital, and kept the proceeds of the sales untouched.

Then let us suppose Gunnell to have brought them into court. What must be done with them?

First, all debts are to be paid, and the residue distributed between the partners, first paying them their capital, and then their share of profits.

This is probably what the Auditor had in view in his statement on page 7, of the Record.

He puts down the sales at.....		$93,471 11
And deducts purchases.....	$55,146 55	
And expenses.....	12,242 95	
		67,389 50
Leaving for capital and profits		$26,081 61

Ought *all* these purchases be deducted? Recollect every deduction is a credit to Gunnell, *personally*. It is only the balance that belongs to the firm.

Now, did Gunnell pay for this $55,146 55, out of his own pocket. Did he himself pay, or go in debt for ALL the lumber bought from third parties? Did he not have $7,775 65 of Bird & Hepburn's money to start with? What else did he do with their money if he did not pay it away for lumber? And if he did pay it away for lumber how can the firm still owe him, or owe anybody for THE WHOLE amount of lumber purchased.

In truth there remained due for lumber not $55,146 55 but ($55,146 55 less $7,775 65,) $47,370 90. Give Gunnell credit for $47,370 90 as to be paid out of the sales

instead of $55,146 55, and the rest of the Auditor's account is right. Of the lumber purchased, $7,775 65 was paid out of Bird & Hepburn's capital; only $47,370 90 was paid or payable out of sales.

IV.

The defendants' account, B, Record p. 16, makes a dead loss of $1,437 42; but in his own "verification of account B," on same page, being confronted with the fact stated by the Auditor, that the partners had actually divided $15,439 14, being $1,035 93 more than their capital, he is obliged to admit there was a profit equal to such excess, but his figures show no such profit, nor does he in any way reconcile his figures with the fact.

V.

Finally. Let us consider the facts stated by the auditor, as if they were entries in a merchant's day-book, and let us journalize and post them, using the original figures:

Day-book.

"*His* [Mr. Gunnell's] *stock was put in as his advance, at the value of* $6,627 56."

Journal.

Merchandize Dr. to W. H. Gunnell..... $6,627 56

Day-book.

"*Bird & Hepburn advanced cash*, $7,775 65."

Journal.

Cash Dr. to Bird & Hepburn..... 7,775 66

Day-book.

"*The expenditure for lumber and other articles during the four years, was* $55,146 55."

Journal.

Merchandize Dr. to cash..... 55,146 55

Day-book.

"*The expenses of conducting it*, $12,242 95."

Journal.

Expenses Dr. to cash..... 12,242 95

Day-book.

"*The aggregate sales of every description* $93,471 11."

Journal.

Cash Dr. to merchandise..... 93,471 11

Ledger.

Now let us post these journal entries and balance.

Dr.	Cash.		*Cr.*
To B. & H.....	7,775 65	By mdze.....	55,146 56
To mdze.....	93,471 11	By expenses ...	12,242 95
		Balance	33,857 25
	101,246 76		101,246 76
Balance.....	33,857 26		

Dr.	Merchandise.		*Cr.*
To W. H. Gunnell	6,627 56	By cash.....	93,471 11
To cash.....	55,146 55		
Balance	31,697 00		
	93,471 11		93,471 11
		Balance.....	31,697 00

Dr.	Expenses.	*Cr.*
To cash	12,242 95	

Dr.	Bird & Hepburn.	*Cr.*
	By cash.....	7,775 65

Dr.	W. H. Gunnell.	*Cr.*
	By merchandise..	6,627 56

Now a balance sheet:

Dr.			*Cr.*
Cash.....	33,857 26	Merchandise.....	31,697 00
Expenses.....	12,242 95	Bird & Hepburn	7,775 65
		W. H. Gunnell.	6,627 56
	46,100 21		46,100 21

Now settle profit and loss account:

Dr.	Profit and loss.		*Cr.*
Expenses.....	12,242 95	Merchandise	31,697 00
Balance	19,454 05		
	31,697 00		31,697 00
		Balance	19,454 05
To B. & H., ½...	9,727 02		
W. H. G., ½.	9,727 03		
	19,454 05		19,454 05

Now settle partners' accounts:

Dr.		*Cr.*
	Bird & Hepburn:	
	By balance as above....	7,775 65
	By profit and loss.....	9,727 02
		17,502 67

Dr.	W. H. Gunnell:	*Cr.*
	By balance as above...	6,627 56
	By profit and loss.....	9,727 03
		16,354 59

Now take off another balance sheet:

Dr.			*Cr.*
Cash.....	33,857 26	Bird & Hepburn	17,502 67
		W. H. Gunnell.	16,354 59
	$33,857 26		$33,857 26

Showing that there ought to be cash enough to pay the partners their capital back and $9,727 02 each of profits.

This, however, is according to *original* figures. To complete the account, we proceed thus:

Amount to credit of Bird & Hepburn *as above.*	$17,502 67
Deduct half of the losses and expenses not included in the original figures, $6,488 26...	3,244 13
Balance to their credit.....	14,258 54
Deduct amount of cash collected by them, and merchandise bought by them from the firm.	7,552 68
Balance due to Bird & Hepburn.....	$6,705 86

Or to state it in another form:

Bird & Hepburn's capital.....	$7,775 65
Add one half of the profits, $12,965 79.....	6,482 89
Total to their credit.....	14,258 54
Collected by them of debts due the concern and their bill.....	7,552 68
	$6,705 86

And this Gunnell must pay, because he had all the money except the amount of $7,552 68 above credited as received by Bird and Hepburn.

Second Point.

Shall the complainants be charged with all the bad debts?

There is but a single other point to be noticed. The Auditor reported that the debts were to be equally divided between the parties, and the court confirmed his report. Auditor's report, p. 10.

The defendant claims that the complainants should be charged with all the bad debts.

It appears from the Auditor's report that the complainants did take the books after dissolution, and did collect an amount which, with a bill of lumber bought by them from the firm, amounted to $7,552 68. And this is all they ever got from the concern.

But it also appears that the defendant, after the dissolution, collected, from debts due at dissolution, a sum which, with his bill, amounted to $7,886 46.

These are all the facts stated in the Auditor's report. No evidence was taken tending to show negligence on the part of the complainants, but the defendant contends that upon facts admitted by the pleadings, the complainant is liable for these debts.

He says, that in his answer *to the bill of revivor*, facts are alleged upon which the complainant should be charged with bad debts; that no replication to that answer was put in, and therefore it is to be taken as true. Defendant's Brief, p. 4.

We reply that no such consequence follows:

1. An answer is not evidence for the defendant, except in so far as it is responsive to the bill, and this answer, so far as it states the matters relied on by the defendant to charge the complainant is not responsive to the bill.

2. No replication was required or was necessary to put in issue the said matters.

The answer to the original bill, (Record, p. 4,) was very

brief, it admitted the partnership, dissolution, and all the facts necessary to make out the complainant's case for an account, and the very day it, the answer, was filed, the cause was by agreement referred to the Auditor to state the accounts of the parties. This answer simply states the fact that the books had been put in possession of the complainants, and it did not seek to charge them in any way by reason of such possession.

In the report of the Auditor, made on the reference under these pleadings he reported in the words above quoted, that out of the debts *due at the time of the dissolution*, the complainants had collected $7,552 68, and the defendant had collected $7,886 46, and the residue, bad and uncollected debts, amounted to $5,461 56.

Thus it appeared that notwithstanding the complainants had the books, the defendant went on collecting, and kept the amount he collected. This was in 1852.

In June, 1859, the bill of revivor was filed; a pure bill of revivor, stating only the facts necessary to have the cause revived, and the proceedings continued from the point reached when the complainants died, and concluding with the prayer for a writ to the defendant *to show cause* why the suit should not be revived.

Now, the rule is, (Rule No. 56,) that if no cause to the contrary be shown by next rule-day, "the suit shall stand revived, as of course." The subpœna was served in June, 1859, (so admitted in the answer;) no answer was made by the defendant until October following, and so the suit stood revived on the first Monday of August at latest.

Then the defendant, in October, filed an answer to the bill of revivor, admitting every fact stated in the bill, and then went on to state new matter as to the conduct of the complainant in regard to the books, &c., and suggesting, but *not* averring, that the complainants had made further collections.

This was not responsive to the bill; and on a rule to show cause why the suit should not be revived, it was simply impertinent. No replication was needed, or could have been properly filed, for no cause was shown why the suit should not be revived, and it already stood revived.

If the defendant sought in this proceeding to charge the complainants in respect of the debs not collected, or in other words, claimed an amount from them of the assets in their hands; he should, at the proper time have filed a cross-bill for that purpose. But as we have seen, he failed to do so, and in his original answer, this point is not in any manner asserted or relied on.

The original order of reference, (Record, p. 5,) authorized and required "the Auditor to call for the books and papers of the partnership, and to take any testimony," &c.

The Auditor did call for them and they were produced, and he stated the accounts as well of transactions subsequent to the dissolution as prior thereto, covering the whole account, and his report was by the court "in all things confirmed." Record, p. 261.

The whole of the evidence is omitted from the record by the stipulation of the parties, (Record, p. 1,) and the defendant now asks the court to find error in the conclusion without any evidence to establish it.

Conclusion.

It is submitted that upon the matter decreed in the court below no error occurred to the prejudice of the defendant, and that upon the complainants' cross appeal the decree below should be reversed, and a decree entered in favor of the complainants for $6,705 86 with interest, from May 1, 1849, and costs.

J. M. CARLISLE,
J. D. McPHERSON,
Att's for Complainants.

NOTE.

This case was given to the Editor of the Sunday Chronicle as a problem for the entertainment of his readers and drew forth some additional illustrations. Here are the problem and solution.

A complicated case.—*From Sunday Chronicle, March* 13, 1870.

The perplexing account of the Maine liquor agent, which we referred to our readers for settlement a few days since, produced so much healthy exercise in the science of mathematics in obtaining a correct solution, that we are tempted to propound another mixed question.

Here, then, is a real case arising from a partnership transaction between three gentlemen, residents of this city. The difficulty of reaching a satisfactory settlement carried the case into litigation. A suit has been pending since 1849, and having passed through the old Circuit and the present Superior Courts of the District, is now in the Supreme Court on appeal.

The whole controversy is to find what were the profits, if any, of the business in which these men were engaged. The following is a statement of the question: A, being engaged in the lumber business, took in two silent partners, B and C, who were to have one-half of the profits A put in stock worth $6,627 56; B and C put in cash to the amount of $7,775 65, all of which went into A's hands. In the course of four years, all the lumber being sold, the following were the gross transactions:

A had bought from other parties additional stock costing $55,878 73; he had paid out as expenses, $12,537 47. His sales netted in money, disregarding bad debts, $88,009 55.

Now B and C claim that the profits were $12,965 79, and that half of this sum, together with the amount they invested, should be returned to them.

A claims that there were no profits, but a loss of $1 437 12.

The court decided that the profits were $5,190 14, and settled the account accordingly, whereupon both parties appealed to the Supreme Court. Query—were there any profits, and, if so, what is each party's share?

The complicated Lumber Case.—*From Sunday Chronicle, March* 20, 1870.

To the difficult question involved in the copartnership lumber case we submitted to our readers in last Sunday's Chronicle, eighteen answers have been received.

"Justice" finds that "there is a loss on the capital stock invested of $1,437 42, (about ten per cent.,) but the gains and losses must be fairly divided. The party investing $7,775 65 cash is entitled to ninety per cent. of the amount from the profits unless it is agreed to divide the profits equally."

"Virginia Richmond" states the net profits to be $6,338 23, and the amount A owes B and C to be $944 76.

"M. C. C., Second Auditor's Office," and "George B. Vashon" finds the net profits to be $5,190 14, and that B and C are entitled to receive $10,370 72.

"S. H. B.," "William Millar," "E., paymaster General's Office;" "Merchant," "C. Colne," "Brown Jones," "J. N. E.," "H. L. Jaques," "W. C. P.," "H. R. M.," "W. D Burbage," "Josephus," and "S. N. G." ascertain that the net profits are $12,965 79, and that A should pay over to B and C $14.258 54½.

"Justice," it will be observed, agrees with A in his claim; "M. C. C." and "George B. Vashon" agree with the decision of the court, while all the others coincide with the claim of the silent partners, B and C.

"William Millar, Third Auditor's Office," gives the following lucid statement of the case:

The amount claimed by B and C is correct, which may be demonstrated as follows: Let us assume that all the transactions referred to in this problem took place in one day, for I think all will admit that a variation of the time will not affect the result. Let us also assume that all the lumber purchased was purchased at one time, and all the lumber was sold at one time. Then it will be seen that A having only $7,775 65 in cash, has not enough to purchase $55 878 73 worth of lumber and pay the expense incurred, $12.937 47, but must borrow a sufficient amount to do so, which is easily found to be $60,640 55.

All the lumber purchased and the entire stock A had on hand is now sold for	$88,009 55
Let A now return the money he borrowed	60,640 55
It is clear that A has left cash amounting to	27,369 00
Deduct value of cash and stock invested—cash, $7,775 65; stock, $6,627 56	14,403 21
Profits	12,965 79

"S. H. B." in his statement includes the following to illustrate where the court erred in its decision:

A.		*Dr.*
To cash received from sales		$88,009 55
Contra.	*Cr.*	
By cash returned to B and C, original capital	$7,775 65	
By cash returned to himself	6,627 56	
By cash paid for expenses	12,537 47	
By cash paid for lumber	55,878 73	
		82,819 41
Balance (amount of profits found due by court)		5,190 14
Add to above balance, the amount of cash received by A from B and C, erroneously omitted		7,775 65
Which makes correct balance—net profits		$12,965 79

In the Supreme Court of the U. S.

William H. Gunnell, v. John H. Bird, A. D. B. N. &c. and David Hepburn, A.D.B.N.&c.	In Equity,

This is an appeal from a decree of the Supreme Court of the District of Columbia.

CASE.

William H. Gunnell, Peter Hepburn, and William Bird entered into a co-partnership in the lumber business in the city of Washington, and carried it on for four years, ending 1st May, 1849.

After that Hepburn & Bird filed this bill to obtain a settlement of the partnership. Gunnell answered, and the case was by consent of parties, and under an order of the court referred to the auditor, "to state the partnership account between the parties in the matter of the bill," and he was authorized to call for the books and papers of the partnership, and to take any testimony which (may) might be adduced by either of the parties upon the usual notice and that he report at the (then) next term of the court." page 5, of the record.

The auditor made his report, which will be found on p. p. 5, 6. 7, 8, 9, and 10 of the record.

By that report he brought the appellant, Gunnell, in debt to his co-partners in the sum $3,001.36 (p. 10) as of the 1st May, 1849. At page 5 he reports. "At the termination of the partnership the stock on hand, the books, and unsettled accounts went into Bird & Hepburn's hands.

At page 8, between marginal pages 19, 20, he says: "Column 3 of that schedule shows the bad and *uncollected* debts at this time amount to $5,461.56."

It will be seen on page 3 that the bill was filed on the 7th August, 1850; the answer, (p. 4,) 6th Dec. '51, and in the answer, (same page, margin 9,) the defendant "admits the dissolution of said co-partnership at the time stated in said bill, and says he then put into the possession and control of complainants all the books, papers, vouchers, assetts, and property of every description, that they might close the said business, and satisfy themselves out of the same." The auditor's report (page 5) was filed 27th August, 1852.

On the 31*st May*, 1854, (page 10, margin 24,) the auditor's report was submitted to the court on notes by counsel.

Nothing further was done till 8th June, 1859, when a bill of revivor was filed, (p. 10.) The defendant answered 20th October, 1859, (p. 12,) and in that answer states that he "offered to take and collect" (the outstanding accounts,) "but the said William Bird, in his life time, and who had them in his possession, declined to let him do so except upon the terms of his being responsible for the gross amount thereof, or admitting the claims, and pretensions of complainants as set up in their said bill; that since then he is informed and believes that portions of the said debts reported by the auditor as unpaid have been received and collected by said William Bird in his life time, and are nowhere credited in this cause; that as to all the residue not so collected, they are now barred by lapse of time; that *he knows* the larger portion of said debts so reported as unpaid by the said auditor might have been collected with reasonable diligence, and if they have been lost it is in consequence of the neglect of the said complainants, and their said refusal to let this defendant have them to collect; and he submits that the said complainants should be charged in an account hereafter to be stated to be taken

under the direction of this court, with all said debts, except those which they can satisfactorily show could not have been collected by reasonable diligence on *his* part."

This answer is duly sworn to, no replication was filed.

On the 20th October 1859, the cause was again referred. to the auditor, (pp. 12-13,) "to state the account between the said parties; and he will make such alternate statements thereof as may be required by either party."

On the 6th Febuary 1866, (p. 13.) the auditor made a second report. No proof was taken, the report re-affirmed that which had already been made.

To this report exceptions were taken by both parties. The defendants exception p. 18, is that the auditor has not credited the defendant with capital invested by him in said business, and second, that he hath not charged complainants with the assets of the partnership which came to their hands, and for which they have failed to account.

The auditors report was confirmed, pp. 18-19, and an appeal prayed to the General Term.

At the General Term, p. 19 the case was "referred to the auditor to revise and restate the account and report to this court."

On the 11th Febuary 1867, the auditor made his report to the General Term, (p. 20) and found the same balance due. (p. 22.)

To this report the same exceptions were filed. They were overruled and a decree passed, (p. 23) "that the defendant pay to the complainants the sum of $3001.56. with interest from 1st. May 1849, and costs.

From that decree this appeal has been taken.

There are various minor and interlocutory matters with which this court need not be troubled.

The two questions raised on this state of the case are:

First. Ought not the complainants to have been charged with the total amount of the debts turned over to them by

the defendant, and credited with such as they should satisfy the auditor by proof could not have been collected by reasonable diligence?

If so, the bill ought to have been dismissed, for they are charged with an amount far greater than the amount found to be due to them, considering those debts as lost, and second. In the accounts as stated by the auditor or either of them, has the defendant been credited with the amount of his capital?

FIRST.

The court below erred in not charging the complainants with the amount of the debts turned over to them by Gunnell.

The original answer of the defendant asserts the fact, and the auditor finds it to be so, and ascertains the amount to be $5,461.55, being [$5,461.55—$3001.56,] $2.460 more than the whole amount found due to complainants by defendant.

There was gross negligence on the part of the complainants in not prosecuting their case and in failing to enforce these collections. No account is given of them from 27th August 1852, at which time they were barred by the statute, for the firm was dissolved in May, 1849, until 6th February, 1866, when the second report was made, nor was any account of them, or any proof taken in regard to them at any time.

In the meanwhile the defendant had filed his answer to the bill of revivor averring as a fact that the larger portion might have been collected with reasonable diligence, and his offer to take and collect them, and the refusal by the complainants to let him take them except upon unjust and unequal terms. The answer is sworn to, there is no replication, and it is to be taken as true. Ware *et al. v.* Richardson, 3 Mary, 558–9; Mason *v.* Martin & Kemp, 4 Mary, 134; Story Eq. Pl. § ~~887~~ 874.

The bill ought to have been dismissed.

SECOND.

Has the defendant been credited with the amount of capital put in by him?

The substance of the case is very fairly stated by the auditor (p. 5.) "Both parties have argreed that the following facts are to be taken as established, viz: the business, the lumber business, in which Mr. Gunnell had been engaged, was to be under his care and management. *His stock was put in as his advance* at the value of $6,627.56. Bird and Hepburn advanced in cash $7,775.65, the whole capital went into Gunnell's hands, the expenditure for lumber and other articles, *purchased of third persons* for the business, during the four years was $55,146.55, the expenses of conducting it $12,252.95, the aggregate sales made of every description, $93,471.11, they were to share equally. Profits were made.

At the termination of the partnership the stock on hand, the books, and unsettled accounts, went into Bird and Hepburn's hands."

Upon this statement of the facts, the auditor at p. 8, 9, has made up his accounts in which he gives Gunnell credit for only the $55,146.53, expended by him in purchases from third parties, and makes the $93,471.11 the amount of the sales, as the product of these purchases, thereby rejecting the $6,627.56, Gunnell's stock which constituted part of the material out of which the $93,471.11 resulted.

This is his chief error, and he has thus failed to give Gunnell credit for the lumber purchased from himself making more than 1-8 of the whole cost of the lumber sold

If this be so, the court below in confirming that report erred.

THIRD.

The court further erred in adjudging Gunnell to pay to the complainants $3,001.56

This amount is reached by two errors of the auditor. The first is in his failing to include in the amount of the lumber, that which was purchased with Gunnell's capital, as already shown.

The second is after having thus erroneously found the profit to have been $5,190,14, p. 9. in proceeding to ascertain the interest of each of the partners, making that of Gunnell, including the capital put in by him, $9,222,63, and that of Bird and Hepburn, $10,554,24, and then deducting the amount collected by them, &c., $7,552,65, showing that there was still due to them $3,001,56, he charges this amount to Gunnell. The Court adopted this report and adjudged Gunnell to pay the amount thus found due by the auditor.

It is not pretended that Gunnell ever collected before the dissolution or in any way after the dissolution of the co-partnership had assetts of the firm out of which he might have collected this sum.

But the same report shows that Gunnell's share including his capital was $9,222.63, and that he had collected and received only $7,886.45, being $1,366.18 less than the amount thus ascertained to be due to him, and then turned over to Bird and Hepburn all the assets and property of the firm, It is therefore clear that Bird and Hepburn were not entitled to a decree against Gunnell for this $3,001.56, they themselves having in their possession the only funds for the payment of that balance, and Gunnell being entitled to $1,366.18 out of the balance funds.

JOS. H. BRADLEY,
For Appellants.

Nos. 479 &c on Motions.

475

[No. 1.]

IN THE

Supreme Court of the United States.

ADJOURNED TERM, COMMENCING 31st OCTOBER, 1870.

WM. FAGAN AND OTHERS, *Plaintiffs*,
vs.
THE STATE OF LOUISIANA, ON THE RELATION OF SIMEON BELDEN, ATTORNEY GENERAL.

No. 479.
DOCKET SUP. CT.

Nov 23 1870

The plaintiffs in this court, in the cause of the title and number on the docket above stated, by attorney, come and represent to the court, that it appears by the record filed, that during the month of May, 1870, they obtained the writ of error and citations from the Hon. J. P. Bradley, a justice of this court, and gave a bond approved by him, and duly served a copy of the writ of error allowed by him, within ten days from the final judgment in the cause in the Supreme Court of the State of Louisiana between the parties aforesad, to which the said writ applied, and is now on the docket, of the number aforesaid, and that the said writ of error thus was a supersedeas, and that no proceedings should have been taken, or could legally have been taken, to enforce that judgment after that, in the supreme court of the state or an inferior court.

2nd. The said Simeon Belden, attorney general, in the name of the state, with knowledge of the facts aforesaid, on the 2d of June, 1870, moved the 5th District Court of the Parish of Orleans, where it had been in

the first instance commenced, and from whose judgment the appeal had been taken before the 8th district court was established or organized, to the 8th District Court of the Parish of Orleans, where it had never been, and this was done. Thereupon the said Simeon Belden moved the said 8th District Court of the Parish of Orleans, for an enforcement of the judgment of the supreme court of the state, and in the same court moved the court for an attachment against the plaintiffs for a breach of the injunction that had been originally issued in the said cause, by the 5th district court, and thereupon such proceedings were had in the said court, on said motion, as to lead to the entry and execution of an order to the effect following: that the sheriff be, and he is hereby instructed and required to enforce the prelimenary injunction issued herein, and to prevent further violation of the same, until the final decision of the Supreme Court of the United States, or the further order of this court. The clerk will forthwith furnish the sheriff a copy of the said writ of this order for his guidance. Defendants to pay costs.

And thereupon the sheriff of the parish aforesaid, Thomas L. Maxwell, by his deputy has returned, that in compliance with an order of the court, and in order to enforce the preliminary injunction herein issued, the sheriff placed one of his deputies in charge of the premises described in the proceedings of the cause, to prevent the persons or corporation herein mentioned from erecting wharves, docks, ways, etc., etc., on said premises, from receiving, keeping, yarding, or preserving any beeves, cattle, cows, or any other animals designed for human food, in the parishes of Orleans, Jefferson, or St. Bernard, and from slaughtering any such animals in said parishes, except at the building of the Crescent City Live-Stock and Slaughter-house Company; and these plaintiffs aver that the said sheriff has continued to maintain

his charge of the said premises for his purpose aforesaid, from thence to this time.

The said plaintiffs aver that after the issue of the writ of error, the filing of the bond in the same, and the service of a copy of the writ of error aforesaid, by filing the same in the clerk's office, and the service of citation, all within ten days from the date of the final order of the Supreme Court of Louisiana, in the cause aforesaid, in June, 1870, the Crescent City Live-Stock and Slaughter-house Company, in June, 1870, filed in the 8th District Court of the Parish of Orleans a petition which recites in general terms the act of the 8th of March, 1869, of the General Assembly of Louisiana aforesaid, and which contains the incorporation of said last mentioned company, and claiming of that court that the corporation of the city of New Orleans and the Board of Metropolitan Police shall enforce the same, and therein applied for and obtained an order of the court to enjoin the said corporation and the said board of police to prevent any and all persons from landing, keeping, or slaughtering any cattle, beeves, sheep, swine or other animals, or from having, keeping, or establishing any stock-landings, yards, pens, slaughter-houses, abattoirs at any point or place within the city of New Orleans, or the parishes of Orleans, Jefferson, and St. Bernard, except the said corporation; to prevent any and all persons from selling or offering for sale in the city of New Orleans, any animal meat for human food, not slaughtered or inspected at the slaughter-houses of said corporation; and the said Simeon Belden, attorney general of the state aforesaid, did intervene in said cause, and adopt the petition, and pray for the execution of the said act of the legislature, as prayed for in that petition, which corresponds with the petition filed in the case before this court by writ of error as aforesaid, all of which will more fully appear by a reference to the affidavits, and a copy of the record filed, and the original record.

And, whereas it doth most manifestly appear from the record in the cause aforesaid, and the records and affidavits filed, showing the proceedings in the 8th district court, that the object and design and operation of the same has been to evade and to disobey the writ of error aforesaid, and the supersedeas implied from the facts aforesaid, and to show contempt to the same; and whereas the said plaintiffs do maintain that they are authorized to have, hold, enjoy, and use their property specified in the proceedings aforesaid, and to pursue their lawful avocations without molestation from the State of Louisiana or its attorney general, or its corporations and boards of police aforesaid, the plaintiffs do move this court for a writ of supersedeas and injunction, directed to all of the said parties, State of Louisiana, and Simeon Belden its attorney general, the city of New Orleans, the Metropolitan Board of Police, and Crescent City Live Stock Landing and Slaughter-house Company, and commanding them to suspend all efforts and attempts to enforce against these plaintiffs any of the prohibitory clauses of the said act of the 8th of March, described in the proceedings of the said act, as affect the said plaintiffs, or are set forth in the orders aforesaid, or which prohibits their use of their property mentioned in the said proceedings, for any of the purposes of carrying on and conducting their business as set forth, and that the said property in the charge of the sheriff be surrendered to them, and that all of the process aforesaid be superseded, and their execution be restrained until the final order and judgment in the suit, and that the said several parties be enjoined from molesting or disturbing the plaintiffs under the disfranchising or prohibitory clauses of the act aforesaid, and that their liberties be preserved and maintained as they were before the enactment of the said act; and for special cause for the motion the plaintiffs show—

1st. That the said several proceedings were in violation

of the supersedeas arising from the writ of error aforesaid, and defeats the same, and is a disobedience thereof.

2d. That the exclusive privileges granted by the act of the General Assembly to the corporation mentioned in the record were not a part of the domain of the General Assembly, and that it had no power to grant the same, and their act is void.

3d. That the said act abridges the privileges and immunities of citizens of the United States and withdraws and denies protection where it was the duty of the General Assembly to provide for it.

4th. That the act violates the constitutional rights of the plaintiffs, as set forth in the record.

[Filed 17 October, 1870.]

Campbell—
1869— Act 118 —

476

[No. 2.]

IN THE

Supreme Court of the United States.

THE LIVE STOCK DEALERS' AND BUTCHERS' ASSOCIATION OF NEW ORLEANS,
vs.
THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER-HOUSE COMPANY.

No. 477.
Docket Sup. Court U. S.

The plaintiffs show that a writ of error and bond were allowed and approved, and that citation issued and was served, and that a copy of the writ was filed in the Supreme Court of Louisiana during the month of May last, within ten days from the date of the final judgment, so as to transfer the cause to this court and to be a supersedias.

That with knowledge of the facts, and their legal effect, the defendant, after the same, in June, 1870, commenced a suit in the 8th District Court of the Parish of Orleans to evade and to defeat the operation of the supersedeas aforesaid and the process and jurisdiction of this court. The said corporation applied to the said court for an order to the city of New Orleans and the Metropolitan Board of Police, commanding and enjoining them to prevent all persons (except said defendants) from landing, keeping, or slaughtering any cattle, beeves, calves, sheep, swine, or other animals, and from having, keeping, or establishing any stock-landings, yards, pens, slaughter-houses, at any point or place in the city of New Orleans or the parishes of Orleans, Jefferson, and St. Bernard, and to prevent and prohibit all persons from selling animal meat

for human food in the city of New Orleans that had not been slaughtered at the houses of the defendants.

The plaintiffs show that they were not made parties to the said petition, and that the same was granted without notice to them. But that the same was granted by the judge and the writ or order issued and was executed in the manner set forth in the affidavits on file with the record of the said petition. That the said order, in so far as it affects the power of landing, keeping, or slaughtering animals, or having wharves, yards, pens, slaughter-houses, or exposing for sale meat for food, prepared for market in said parishes at any other place than the house of said company, is in full force. These two municipal authorities are not officers of the court nor subject to them.

These defendants submit the record and affidavits to the court, and pray of the court a supersedias injunction, or other restraining order, to be directed to the said defendants, to the city of New Orleans, and to said 8th District Court of the Parish of Orleans, commanding them not to prohibit, restrain, prevent, or interfere with the plaintiffs in landing, keeping, or slaughtering of animals, or in having, keeping, or establishing wharves, pens, yards, abattoirs, slaughter-houses, and of selling meat in the parishes aforesaid or city aforesaid, in as full, ample, and complete a manner as they did before the passage of the act of the 8th March, 1869, creating the defendants as a corporation, or as the said corporation may do under said act, and that full and ample relief be granted for the acts aforesaid, and that the supersedeas be fully enforced that is implied from the facts aforesaid.

And that the said defendants be required to desist from any attempt to interfere with their houses, abattoirs, or other property for carrying on the business referred to in said pleadings.

[Filed 17 October, 1870.]

[No. 3.]

IN THE

Supreme Court of the United States.

IMBAU, AYCOCK & Co.
vs.
THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE CO.

No. 475 on the Docket of the Court.

In this cause the said plaintiffs show to this court that, during the month of May, 1870, they obtained the writ of error to the Supreme Court of Louisiana, gave the bond, obtained the citation, and served a copy of the writ of error in the clerk's office, whereby the said cause was transferred to this court and a supersedeas was effected, the said acts having been performed within ten days from the date of the final judgment in the said cause—all of which will appear from the record.

The plaintiffs further show, from the record and affidavits filed herewith, that, with full notice of the facts aforesaid and their legal effect as a supersedeas of the execution of said judgment, to evade the effect thereof and to enforce the judgment so obtained and superseded, the defendants did file a petition in the Eighth District Court of the Parish of Orleans, setting forth their act of incorporation, their claims under the said act, and did ask of the court a process directed to the city of New Orleans and the Metropolitan Board of Police to use their municipal powers to hinder and prevent all persons from doing or performing any of the acts which the

plaintiffs have claimed the right to do in their suit, and to enforce the exclusive privileges mentioned in the said act of incorporation as granted to the defendants. They further show that the judge of said court, without any notice to the plaintiffs, and without making them parties to said cause or giving them an opportunity to defend, did cause to be issued to the said corporation and boards of police writs by which they were peremptorily ordered to prevent any and all persons except the plaintiffs in that suit from landing, keeping, or slaughtering any cattle, beeves, sheep, swine, or other animals, or from having, keeping, or establishing any stock-landings, yards, pens, slaughter-houses, or abattoirs at any point or place within the city of New Orleans, or the parishes of Orleans, Jefferson, or Saint Bernard, and to prevent the selling or offering for sale in the city of New Orleans any animal meat for human food not slaughtered or inspected at the slaughter-house of the said plaintiffs. The corporation of New Orleans and the Metropolitan Board of Police were thus made sheriffs to enforce the judgments of the court that had been superseded by writs of error sued out as aforesaid—for such has been and is the effect of this proceeding.

The plaintiffs have been able to do no act connected with their lawful business because of the said proceedings, and for proof they refer to the record of said proceedings in the eighth district court, and the affidavits filed.

The plaintiffs, upon the facts aforesaid, move for a supersedeas and injunction addressed to the said defendant, the said city of New Orleans, and Metropolitan Board of Police, to suspend any and all action upon the said matter, and that they be required and enjoined not to hinder, prevent, or in any manner impede the plaintiffs from having, maintaining, keeping, or establishing any of the landings, pens, yards, abattoirs, within the parishes aforesaid that are specified in the proceedings in the record in

this court, or from doing any business that they had been doing, or it was lawful for them to do, before the passage of the act of incorporation of the said defendants, but that they be permitted, without molestation, to prosecute their business of landing, keeping, and slaughtering cattle, beeves, swine, and all other animals suitable for human food, at such places and under such conditions as they were allowed before the 1st day of June, 1869, within said parishes, or in such portions of the same as the court may order, and that the said 8th district court be prohibited from further action in the premises.

J. A. CAMPBELL,
Attorney for the Plaintiffs.

[Filed 17th October, 1870.]

[No. 4.]

IN THE

Supreme Court of the United States.

THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS
vs.
CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY.

Docket Nos. 476 and 480 Supreme Court.

The plaintiffs above named show that during the month of May, 1870, they obtained a writ of error, gave a bond, caused the writ of error to be served by filing a copy in the clerk's office, and a citation to be served on the defendants within ten days from the final order in the same in the Supreme Court of Louisiana, so as to remove said cause to this court and to be a supersedeas to any execution—all of which will appear from the record now on file.

That after this had been done the defendants, to defeat the operation of the writs aforesaid, and in disobedience of the supersedeas, applied to the 8th District Court of the Parish of Orleans for an order to the city of New Orleans and the Metropolitan Board of Police, being municipal authorities in the State of Louisiana, to command them to prevent all persons from landing, keeping, or slaughtering any cattle, beeves, sheep, swine, or other animals, (except the said defendants,) and (with the same exception) to prevent and hinder any and all persons from having,

keeping, or establishing any stock-landings, yards, pens, slaughter-houses, or abattoirs in the city of New Orleans, or in the parishes of Orleans, Jefferson, and St. Bernard, or to allow the sale or the offer to sell animal meat for food not slaughtered at the houses of the defendants. The order was granted as broadly as it was asked for, and it has been executed to prevent the plaintiffs in this court to have any benefit of the supersedeas implied from the acts mentioned above in the first paragraph of this motion. All of which will appear from the record of the said proceedings in the 8th district court, and the affidavits on file with the same, which are submitted herewith.

The plaintiffs move the court for an order of injunction and supersedeas to command the said defendants and the city of New Orleans, the Metropolitan Board of Police, in no manner to hinder or to prevent the plaintiffs from landing, keeping, or slaughtering any animals of the kind before mentioned, or of having, keeping, or establishing any of the structures before mentioned, or for vending and offering to vend animal food in the markets of New Orleans and the parishes aforesaid, as fully as they could before the passage of the act incorporating the defendants, of the 8th March, 1869, or as the defendants are allowed to do by the said act, and that a suitable order be made to the said 8th district court to prohibit it from further proceeding in the premises.

[Filed 17 October, 1870.]

AFFIDAVIT "Z."

Supreme Court of the United States.

Inbau, Aycock & Co., Plaintiffs in Error,
No. 475. vs.
The Crescent City Live-stock Landing and Slaughter-House Co., Defendants in Error.

The Butchers' Benevolent Association, Plaintiffs in Error,
No. 476. vs.
The Same Party, Defendants in Error.

The Live-Stock Dealers' and Butchers' Association of New Orleans, Plaintiffs in Error,
No. 477. vs.
The Same Party and Another, Defendants in Error.

William Fagan et others, Plaintiffs in Error,
No. 479. vs.
The State of Louisiana, ex relatione S. Belden, Attorney General, Defendant in Error.

and

The Benevolent Butchers' Association, Plaintiffs in Error,
No. 480. vs.
The Crescent City Live-Stock, Landing, and Slaughter-House Company, Defendants in Error.

The undersigned of the plaintiffs in error in the above-entitled and mentioned suits, being duly sworn, depose and say, that on the 9th of May, 1870, each and all of said suits were then pending in the Supreme Court of the State of Louisiana, and were on that day by the said supreme court finally decided and adversely to these affiants; that affiants immediately sued out writs of error from the Supreme Court of the United States to the Supreme Court of the State of Louisiana, for the removal of the records and proceedings and all other things pertaining to said cases from said Supreme Court of Louisiana to the Supreme Court of the United States, which writs of error were allowed on the 13th of said month of May, by his honor, Joseph P. Bradley, associate justice, citations signed and bonds approved, and the same with the writs duly lodged and filed in the clerk's office of the Supreme Court of Louisiana, and which proceedings and orders worked a

supersedeas in each and all of said causes then in the Supreme Court of the State of Louisiana and now in the Supreme Court of the United States, as will more fully and at large appear by the inspection of the records in this honorable court in each of said causes.

Affiants further depose and say that, notwithstanding said writs of error, operating as a supersedeas in each of said causes, and notwithstanding said parties, defendants in error in said causes, are duly cited to appear in the Supreme Court of the United States, as appears on the return on the citations in each of those causes, the said Crescent City Live-stock Landing and Slaughter-house Co., their officers, agents, employees, and attorneys, and the said S. Belden, Attorney General of the State of Louisiana, persist in their efforts against these affiants and their interests, and in violation of their rights under said writs of error, and in contempt of the authority of this court. That on the 3d of June, 1870, the said Crescent City Live-stock Landing and Slaughter-house Company, through Franklin J. Prott, its president, and Charles A. Weed, one of its directors, he becoming security, and by the aid of Joseph P. Horner, one of its counsel, acting as its attorney, presented a petition to the honorable the Eighth District Court for the Parish of Orleans, Henry C. Dibble, judge, and from him obtained an order called an injunction, commanding the city of New Orleans, S. C. Emly, Administrator of Commerce of said city, E. W. Pierce, Administrator of Police of said city, officers under the charter thereof, and the Metropolitan Board of Police, an independent organization under the laws of the State Louisiana, having exclusive police powers over the three parishes of Orleans, Jefferson, and St. Bernard, and "enjoining them in the name of the State of Louisiana and of the 8th district court to prevent any and all persons except the plaintiffs," therein meaning the said Slaughter-house Company, "from landing, keeping, or slaughtering any cattle, beeves, calves, sheep, swine, or other animals, and from having, keeping, and establishing any stock-landings, yards, pens, slaughter-houses, or abattoirs at any point or place within the city of New Orleans or the parishes of Orleans, Jefferson, or St. Bernard, and to prevent and prohibit any and all persons from selling or offering for sale in the city of New Orleans any animal meat for human food not slaughtered and inspected at the slaughter-houses of petitioners, plaintiffs," therein meaning said Crescent City Live-stock, Landing, and Slaughter-house Company, and "to use all the powers conferred upon you," that is, the defendants in said suit above named, "to carry into effect this injunction." That on the 6th of June, 1870, the said S. Belden, Attorney General, notwithstanding said writ of error in the suit of Wm. Fagan et als., plaintiffs in error, vs. The State of Louisiana, S. Belden, Attorney General, No. 479, intervened and came into said suit in the 8th District Court, Parish of Orleans,

of the Crescent City Live-stock Landing and Slaughter-house Company vs. The Board of Metropolitan Police et als., No. 118 of the docket of that court, and prayed that the injunction therein issued be made perpetual, which injunctions, so called, still remain in force, as will appear by a complete transcript of the record and proceedings in said cause hereto annexed and marked exhibit A, and made part of this affidavit.

Affiants further depose and say, that on the 3d of June, 1870, they and their associates, plaintiffs in error in the several suits in the caption to this affidavit, were engaged, and had been for a long time, some of them in receiving, having, landed, yarded, penned, and stabled, and of others in purchasing, slaughtering, and preparing for food beeves, calves, sheep, swine, and other animals at wharves, landings, pens, yards, stables, and slaughter-houses, established and erected by them under and by virtue of their rights of citizens of the State of Louisiana and of the United States, and in which they were protected by the various orders issued in these suits at the caption of this affidavit, and especially in the suits Nos. 475, 476, and 477 of the docket of the honorable the Supreme Court of the United States, which establishments were located at the place designated in said suit No. 477, to which reference is made; that without any notice, and while in the peaceful pursuit of their business and calling, and in their accustomed way, they had on the afternoon and evening of the 4th of June, 1870, prepared and caused to be prepared animal food of various kinds for the markets of New Orleans, to be vended therein in order to supply the inhabitants of said city with food on the next and following days, to the extent in value of over twenty thousand dollars, and were early on the morning of the 5th of June, 1870, proceeding from their slaughter-house with their meats loaded in carts to the various markets of the city of New Orleans, when, without notice or warning, their carts with the contents were seized by the officers of the Metropolitan Police in obedience to the injunction, so-called, issued by the 8th district court, as aforesaid, and detained in the street by said police until the meat was wholly destroyed and rendered not only unfit for use but offensive to the neighborhood; that a few loads of meats which had, unperceived, passed the cordon of police and reached the markets were prevented by said police, acting as aforesaid, from being taken into the markets or sold therein, and in most instances became a total loss to these affiants and their associates and customers; that this same course has been persisted in from the said 5th of June, 1870, until the present time, and has caused the destruction of property of affiants and their associates to the extent of many thousand dollars in addition to the foregoing, and has wholly prevented them from pursuing their usual avocations at their usual places of business, and their property purchased by them and the buildings erected thereon, in cost

exceeding two hundred thousand dollars, have thereby become wholly useless to them, and they have been compelled by these proceedings to cease business altogether, or to go to the works and establishment of the said Crescent City Live-stock Landing and Slaughter-house Company, and pay toll to said company, which establishment is inconveniently located, not of sufficient capacity, and illy prepared for their accomodation and for the pursuit of their said lawful business.

And affiants further depose and say, that S. Belden, attorney general, who intervened in the said suit of the Crescent City Live-Stock Landing and Slaughter-house Company vs. The Board of Metropolitan Police et als., in the 8th district court, on the 6th of June, 1870, being the first day the courts were open after the acts of the said metropolitan police, which are above complained of, were done, did, on the 2d of June, 1870, the day preceeding the commencent of proceedings in the 8th district court by the said Slauhter-house Company vs. The Board of Metropolitan Police et als., and as affiants verily believe, in furtherance of the objects of the said Crescent City Live-Stock Landing and Slaughter-house Company, cause the record in the suit of The State of Louisiana ex relatione, S. Belden, Attorney General, vs. Wm. Fagan et als., to be removed from the 5th District Court of the Parish of Orleans to the 8th District Court of the Parish of Orleans, where, the next day, the said Slaughter-house Company instituted a suit, of which exhibit A is a complete transcript, and in which he, intervening, joined said Slaughter-house Company on the 6th of said June, 1870, and that subsequently, to wit, on the 15th of June, 1870, and notwithstanding the writ of error allowed in said cause to the Supreme Court of the State of Louisiana, working a supersedeas, and notwithstanding the citation of the said S. Belden, attorney general, to appear in the Supreme Court of the Unitd States at Washington, which had been previously served upon him, and notwithstanding the lodgment of a certified copy of said writ of error, not only in the Supreme Court of the State of Louisiana, but also in the 5th District Court for the Parish of Orleans, in due time, with all of which proceedings the said S. Belden was familiar, he in furtherance of his design to aid and assist the said Crescent City Live-Stock Landing and Slaughter-house Company, and while proceedings were pending in their suit against the Board of Metropolitan Police et als., did, on the 15th day of June, take out proceedings in said case of The State ex rel. S. Belden vs. Wm. Fagan et als., in the said 8th district court, by rule, to show cause on the defendants in the said suit originally, and now plaintiffs in error in the suit No. 479 of the caption of this affidavit, and which the judge of the said court, Henry C. Dibble, ordered and proceeded, although these respondents protested against, and demurred and excepted thereto, as will fully appear by a record

of the proceedings in the suit of State of Louisiana ex relatione S. Belden, Attorney General vs. Wm. Fagan et als., hereto annexed and marked exhibit B, and notwithstanding the writ of error working a supersedeas, as aforesaid, and notwithstanding said protesting, demurring, and excepting, did ask the court, and the said H. C. Dibble, notwithstanding as aforesaid, did grant an order to the sheriff of the parish of Orleans, Thomas L. Maxwell, and at the instance of the said S. Belden, and in the interest of the said Slaughter-house Company, did instruct and require him, the said Maxwell, to enforce the preliminary injunction issued therein, and to prevent a further action contrary thereto, and which the said sheriff, as instructed, did execute, by placing one of his deputies armed with the said order and instructions in charge of the premises known as the Delery plantation, being the wharves, landings, stables, slaughter-houses, &c., where these affiants had located themselves, and were carrying on their business, and prevented these affiants and their associates, plaintiffs in error in the several suits in the caption of this affidavit, from erecting any docks, ways, wharves, etc., on said premises, and from receiving, keeping, yarding, or preserving any beeves, cattle, cows, or any other animals designed for human food, in the parishes of Orleans, Jefferson, and St. Bernard, and from slaughtering any such animals in said parishes, except at the building of the Crescent City Live-Stock Landing and Slaughter-house Company, and ever since the 27th day of July, 1870, upon which day the sheriff placed his deputy in charge, as aforesaid, until now, these affiants have been prevented, as aforesaid, by the said sheriff Maxwell, under the order of the said Judge Dibble, at the instance of the said Attorney General Belden, and in combination of the said Crescent City Live-Stock Landing and Slaughter-house Company, its officers, agents, employés, and attorney, as aforesaid, and in connection with the said Board of Metroplitan Police, and its officers and employés, and have suffered damages to a great amount, and been prevented in the enjoyment of their rights, and been compelled to go to the slaughter-house of the said Slaughter-house Company, and to pay toll to said company, and to abandon their own ample accommodations on their own premises, and to occupy those of the said Slaughter-house Company, not suitable, and inconvenient in location, and all this in violation of their rights as citizens of the United States, and under their writs of error herein sued out and allowed them in the several suits, at the caption of this affidavit, said writs acting as supersedeas; that all other remedy has been tried and exhausted by them without avail as against the acts of the said S. Belden and the said Crescent City Live-Stock Landing and Slaughter-house Company; that in their proceedings in the suit in the 8th district court, as detailed in exhibit A, these affiants, though not mentioned therein, nor their

associates, are the only parties designed, by the plaintiff and intervener therein, to be effected thereby, and are so effected; that the proceedings thus covertly taken, as detailed both in exhibit A and in exhibit B, are so taken and designed as to avoid, if possible, the effects of the writs of error herein.

DOMINIQUE VERGES,
JOSEP D. BRODERICK,
LOUIS RUCH,
PAUL ESTÉBEN,
WILLIAM FAGAN,
J. T. AYCOCK,
A. JEHLEN,
B. BEAUBAY,
G. TUJAQUE,
S. FIRMBERG,
ANDRÉ MAITHES,
MARTIN LANNES,
J. NEGUELAUCE,
P. SARTHOU,
J. P. ROUEDE,
J. COULONS,
B. DABAT,
his
MICHAEL×PELTZ.
mark.

Witnesss: S. M. TODD Jr.

Sworn to and subscribed before me, this twenty-seventh day of September, A. D. 1870.

[SEAL.]

CHAS. S. RICE,
U. S. Commissioner, Dist. of La.

[Filed 17 October, 1870.]

EXHIBIT A.—Annexed to affidavits made made before me this 27th September, 1870.

[SEAL.]

CHAS. S. RICE,
U. S. Comm'r Dist of La.

STATE OF LOUISIANA:

EIGHTH DISTRICT COURT FOR THE PARISH OF ORLEANS.

CRESCENT CITY LIVE-STOCK LANDING & SLAUGHTER-HOUSE COMPANY

vs.

BOARD OF METROPOLITAN POLICE ET ALS.

Transcript of Record.

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STATE OF LOUISIANA,

Eighth district court for the parish of Orleans.

Crescent City Live Stock Landing and Slaughter-house Co. vs. Board of Metropolitan Police et als. } No. 118.

Petition.—Filed June 3d, 1870.

To the honorable the judges of the eighth district court for the parish of Orleans:

The petition of the Crescent City Live Stock Landing and Slaughter-house Company, or corporation duly established by the laws of the State of Louisiana, and domiciled in the city of New Orleans, respectfully shows:

That your petitioners were duly and legally established and incorporated by a law of the State of Louisiana, passed and approved in the year 1869, entitled, "An act to protect the health of the city of New Orleans, to locate the stock landings and slaughter-houses, and to incorporate the Crescent City Live Stock Landing and Slaughter-house Company;" said act having been approved 8th March, 1869, and taking effect, and took effect, from and after the 1st day of June, 1869, by its own provisions; and said act being No. 118 of the session acts of 1869.

That by the provisions of said act it is ordained, "that from and after the first day of June, 1869, it shall not be lawful to land, keep, or slaughter any cattle, beeves, calves, sheep, swine, or other animals, or to have, keep, or establish any stock-landings, yards, pens, slaughter-houses, or abattoirs at any point or place within the city of New Orleans, or the parishes of Orleans, Jefferson, and St. Bernard, or at any point or place on the east bank of the Mississippi river, within the corporate limits of the city of New Orleans, or at any point on the west bank of the Mississippi river above the present depot of the New Orleans, Opelousas, and Great Western Railway Company, except that the Crescent City Live Stock Landing and Slaughter-house Company may establish themselves at any point or place, as hereinafter provided."

That it is further provided by the provisions of said acts that "the said Crescent City Live Stock Landing and Slaughter-house Company shall have the sole and exclusive privilege of conducting and carrying on the live stock landing and slaughter-house business within the limits and privileges granted by the provisions of this act, and cattle and other animals destined for sale or slaughter in the city of New Orleans, or its environs,

shall be landed at the live stock landings and yards of said company," &c.

And it is further provided by said act that upon compliance with the conditions thereof, that after said first June, 1869, petitioners shall "have and enjoy the exclusive privilege of having landed at their wharves or landing places, all animals intended for sale or slaughter in the parishes of Orleans and Jefferson," and "to have and enjoy," from the said date, the exclusive privilege of having slaughtered therein (the slaughter-houses of petitioner) all animals the meat of which is destined for sale in the parishes of Orleans and Jefferson."

And it is further provided by said act, "that all animals to be slaughtered, the meat whereof is destined for sale in the parishes of Orleans or Jefferson, must be slaughtered in the slaughter-houses erected by the said company or corporation," (your petitioner.)

And it is further provided by said act "that the governor of the State of Louisiana shall appoint a competent person, clothed with police powers, to act as inspector of all stock that is to be slaughtered, and whose duty it will be to examine closely all animals intended to be slaughtered, to ascertain whether they are sound and fit for human food or not, and if sound, and fit for human food, to furnish a certificate stating that fact to the owners of the animals inspected, and without said certificate no animals can be slaughtered for sale in the slaughter-houses of said company (petitioner) or corporation."

All of which will more fully appear by reference to the said act No. 118 of session acts of 1869, which is hereto annexed and made part hereof.

Petitioners further represent that at very great expense and labor before said 1st of June, 1869, they had complied with all the requirements of said act of the legislature, and the governor of the state had appointed an inspector, as required by said act, who has since been in the faithful discharge of his duties, and that therefore said act has been in full force and effect since said date, and your petitioners have been entitled to all the privileges and franchises conferred upon them by said act since said 1st June, 1869.

Petitioners further represent that, notwithstanding the provisions of said act, and in direct violation thereof, sundry ill-advised and ill-disposed persons have erected stock-landings and slaughter-houses within the said parishes of Orleans, Jefferson, and St. Bernard, and have continued therein to carry on the live stock landing and slaughter-house business, since said 1st June, 1869, and in defiance of the provisions of said act of the legislature, and of the rights and privileges of petitioner, and in said slaughter-houses have killed cattle and other animals for sale as human food in the markets of New Orleans and parish of Jeffer-

son, (and without having been inspected,) and have caused the same to be exposed for sale and sold in the parishes of Orleans and Jefferson, and are now doing so daily, in direct, open, and flagrant violation of the provisions of said act and the rights of petitioners, and to the great detriment of the health of the city of New Orleans, which said act is designed to protect; that by such illegal acts petitioner is damaged to an extent greatly exceeding one hundred thousand dollars per annum, and the people of the city of New Orleans are damaged to an extent inappreciable in money.

Petitioner further shows that the Board of Metropolitan Police, a corporation also established by the laws of Louisiana, and domiciled in the city of New Orleans, is charged by law and its act of incorporation to preserve the peace, cleanliness, and health of said city, and that it is bound by law to perform its said duties in carrying out and enforcing the laws of the State of Louisiana, having reference to the parishes of Orleans, Jefferson, and St. Bernard, and more especially said act No. 118 of the session acts of 1869, hereinbefore referred to, but that since said act went into effect, on 1st June, 1869, said board has totally failed to enforce its provisions, and has allowed sundry and divers ill-advised and ill-disposed persons, and still allows them, to erect stock landings and slaughter-houses within said parishes, and to carry on therein the live stock landing and slaughter-house business, and to kill therein cattle and other animals for sale as human food in the markets of New Orleans and parish of Jefferson, and to expose the same for sale, and sell the same in said parishes of Orleans and Jefferson, and without the same having been inspected, as required by said act, greatly to the damage of petitioner and to the detriment of the health of the city of New Orleans, and in direct violation of the provisions of said act of the legislature.

And petitioners further show that it is the duty of said Board of Metropolitan Police, by its officers, agents, and servants, to enforce the provisions of said act of the legislature.

And petitioner further shows that the city of New Orleans, a corporation also duly established by the laws of this state, and domiciled in this city, and E. W. Pierce, administrator of police of said city, and S. C. Emiley, administrator of commerce of said city, are countenancing and permitting said sundry and divers ill-advised and ill-disposed persons in their infraction of said law, as above set forth, and have been, and are, permitting them to carry on said live stock landing and slaughter-house business illegally, and in defiance of said law, and are allowing them to sell the meat of animals thus illegally slaughtered, and without being inspected, in the public markets of the city of New Orleans, greatly to the detriment of the health of said city and to the damage of petitioner.

That by law said city and said Pierce and Emley have the charge of the police and markets of said city, and that it is their duty to carry out and execute the laws of the state relative to said city, and especially said No. 118 of the session acts of 1869, and they have wholly failed, and do now fail, so to do.

Petitioners further represent that they have suffered, and do now suffer, irreparable injury from the failure to perform their respective duties by said Board of Metropolitan Police, said city of New Orleans, said Pierce, and said Emiley, and petitioners have already sustained damages greatly exceeding the sum of one hundred thousand dollars, and will continue greatly to suffer unless said parties perform their respective duties, and that a writ of injunction is necessary to compel said parties to perform their respective duties, and to protect petitioners' rights in the premises.

Wherefore petitioner prays, the premises and the annexed bond and affidavit considered, that a writ of injunction do issue herein, directed to said Board of Metropolitan Police, to said city of New Orleans, to said E. W. Pierce, administrator of police of said city, and to said S. C. Emiley, administrator of commerce of said city, that said Board of Metropolitan Police be enjoined to prevent any and all persons (except petitioner) from landing, keeping, or slaughtering any cattle, beeves, calves, sheep, swine, or other animals, and from having, keeping, or establishing any stock landings, yards, pens, slaughter-houses, or abattoirs at any point or place within the city of New Orleans or the parishes of Orleans, Jefferson, and St. Bernard, and to prevent and prohibit any and all persons from selling or offering for sale in the city of New Orleans any animal meat for human food not slaughtered and inspected at the slaughter-houses of petitioners according to law; and that said city of New Orleans, and said Pierce, administrator of police, and said Emiley, administrator of commerce of said city, be enjoined to prevent any and all persons (except petitioner) from landing, keeping, or slaughtering any cattle, beeves, calves, sheep, swine, or other animals, and from having, keeping, or establishing any stock landings, yards, pens, slaughter-houses, or abattoirs, at any point or place within the city of New Orleans, and that they be further enjoined to prevent the entry into the city of New Orleans of any meat designed for human food not slaughtered and inspected at the slaughter-houses of the Crescent City Live Stock Landing and Slaughter-house Company; and that they be further enjoined not to permit the sale or offering for sale of the meat of any animal not slaughtered and inspected in the slaughter-house of petitioner in any of the public or private markets of the city of New Orleans, and that they be enjoined to prohibit such sale or offering for sale through their agents and employees, their inspectors of markets, and their officers generally; and that said

Board of Metropolitan Police, said city of New Orleans, said Pierce, administrator of police, and said Emiley, administrator of commerce, be enjoined to use all the powers conferred upon them by law to carry out and obey the said injunction.

And petitioner further prays that said Board of Metropolitan Police, said city of New Orleans, said Pierce, administrator of police, and said Emiley, administrator of commerce, be cited to appear and answer this petition, and that, after due proceedings had, the injunction issued herein be made perpetual, and they pray for costs and for all general relief.

(Signed) JOSEPH P. HORNER, *Att'y.*

Affidavit.

Franklin J. Pratt, being duly sworn, says that he is president of the Crescent City Live Stock Landing and Slaughter-house Company, and that all the allegations of the foregoing petition are true.

(Signed) F. J. PRATT, *President.*

Sworn to and subscribed before me this 3rd day of June, 1870.

(Signed) J. CORPREW, *D'y Clerk.*

Order.

Let a writ of injunction issue herein as within prayed for, and according to law, upon petitioner's furnishing bond, with good and solvent security, in the sum of three thousand dollars, conditioned as the law directs.

New Orleans, 3rd June, 1870.

(Signed) HENRY C. DIBBLE, *Judge.*

Citation.—Issued 4th June, 1870.

Citation.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
Board of Met. Police et als.
} No. 118.

STATE OF LOUISIANA,

Eighth district court for the parish of Orleans.
in the city of New Orleans.

To the Board of Metropolitan Police through the Honorable Oscar J. Dunn, president:

You are summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the 4th day of June, in the year of our Lord 1870.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed June 7th, 1870.

Received June 4th, 1870, and on the 6th day of the same month and year served copy of the within citation and accompanying petition on the Metropolitan Police, one of the defendants herein, through the Honorable Oscar J. Dunn, its president, in person.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Returned same day. Sheriff's fees, $2.00.

Citation—Issued June 4, 1870.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
Board of Metropolitan Police et als. } No. 118.

STATE OF LOUISIANA,

Eighth district court for the parish of Orleans, in the city of New Orleans:

Mr. S. C. EMLEY, administrator of commerce of the city of New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the fourth day of June, in the year of our Lord, 1870.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed June 9th, 1870.

Received June 9th, 1870, and on the eighth day of the same month and year served copy of the within citation and accompanying petition on S. C. Emley, administrator of commerce, one of the defendants herein, in person.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Returned same day.

Sheriff's fees, $2.00.

Citation.—Issued June 4th, 1870.

Citation.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
Board of Met. Police et als.
No. 118.

STATE OF LOUISIANA,
Eighth district court for the parish of Orleans, in the city of New Orleans:

Mr. E. W. PIERCE, administrator of police of city of New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the fourth day of June, in the year of our Lord 1870.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed June 9th, 1870.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
Board of Metropolitan Police et als.

Received June 7th, 1870, and on the eighth day of the same month and year served a copy of the within citation and accompanying petition on E. W. Pierce, administrator of police, one of the defendants herein, by leaving the same at his office, in the city hall, corner of St. Charles and Lafayette streets, in the hands of B. C. Meyers, his secretary, who informed me that the said Pierce was absent from his office at the time of said service.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Returned same day.
Sheriff's fees, $2.00.

Citation.—Issued June 4th, 1870.

Citation.

Crescent City Live Stock Landing and Slaughter-House Company
vs.
Board Metropolitan Police et als.
No. 118.

STATE OF LOUISIANA,
Eighth District Court for the Parish of Orleans,
in the City of New Orleans:

TO THE CITY OF NEW ORLEANS, through its Mayor:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the 4th day of June, in the year of our Lord, 1870.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed June 9th, 1870.

Received June 7th, 1870, and on the eighth day of the same month and year served copy of the within citation and accompanying petition on the city of New Orleans, one of the defendants herein, through S. C. Emley, administrator of commerce, and acting mayor of said city, in person.

Returned same day.

Sheriff's fees, $2.00.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Writ of injunction.—Issued 3d June, 1870.

STATE OF LOUISIANA,
Eight District Court for the Parish of Orleans,
The State of Louisiana:

Crescent City Live Stock Landing and Slaughter-house Co. vs. Board of Met. Police et als. } No. 118.

To the Board of Metropolitan Police, New Orleans, greeting:

You are hereby commanded and enjoined, in the name of the State of Louisiana and of the eighth district court for the parish of Orleans, to prevent any and all persons (except plaintiff herein) from landing, keeping, or slaughtering any cattle, beeves, calves, sheep, swine, or other animals, and from having, keeping, or establishing any stock landings, yards, pens, slaughter-houses, or abattoirs, at any point or place within the city of New Orleans, or the parishes of Orleans, Jefferson, and St. Bernard, and to prevent and prohibit any and all persons from selling, or offering for sale, in the city of New Orleans, any animal meat for human food not slaughtered and inspected at the slaughter-houses of petitioner, (plaintiff herein,) according to law. And you are commanded and enjoined to use all the powers conferred upon you by law to carry into effect this injunction.

And you are so enjoined and restrained until the further order of this honorable court.

Witness the Honorable Henry C. Dibble, judge of our said court, this third day of June, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of the independence of the United States.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed June 4th, 1870.

Received June 3d, 1870, and on the same day I served a copy of the within writ of injunction on the Board of Metropolitan Police, defendant herein, by personal service on O. J. Dunn, president of said board.

Returned same day.

(Signed) JAS. BOUDET, *D'y Sheriff.*

Sheriff's fees, $2.00.

Writ of injunction—Issued 3d June, 1870.

STATE OF LOUISIANA,

Eighth District Court for the Parish of Orleans,

The State of Louisiana:

Crescent City Live Stock Landing and Slaughter-house Co.
vs.
Board of Metropolitan Police et als.

TO THE CITY OF NEW ORLEANS, and to S. C. Emley, administrator of commerce of said city, and to E. W. Pierce, administrator of Police of said city, greeting:

You are hereby commanded and enjoined, in the name of the State of Louisiana and of the eighth district court for the parish of Orleans, to prevent any and all persons (except plaintiffs herein) from landing, keeping, or slaughtering any cattle, beeves, calves, sheep, swine, or other animals, and from having, keeping, or establishing any stock landings, yards, pens, slaughter-houses, or abattoirs, at any point or place within the city of New Orleans. And you are further commanded and enjoined to prevent the entry into the city of New Orleans of any meat designed for human food not slaughtered and inspected at the slaughter-house of the Crescent City Live Stock Landing and Slaughter-house Company. And you are further commanded and enjoined not to permit the sale, or offering for sale, of the meat of any animal not slaughtered and inspected in the slaughter-house of plaintiff, in any of the public or private markets of the city of New Orleans; and you are so enjoined and restrained, you and your agents and employees, your inspectors of markets, and your offi-

cers generally; and you will use all the powers conferred upon you by law to carry into force this injunction.

And you are so enjoined and restrained until the further order of this honorable court.

Witness the Honorable Henry C. Dibble, judge of our said court, this third day of June, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of the independence of the United States.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed 4th June, 1870.

Received June 3d, 1870, and on the same day I served copies of the within writ of injunction as follows: One copy on the city of New Orleans by personal service on S. C. Emley, acting mayor of said city; one copy on S. C. Emley, administrator of commerce of New Orleans; and one copy personally on E. W. Pierce, administrator of police of said city.

Returned same day.

(Signed) JAS. BOUDET, *D'y Sheriff.*

Sheriff's fees, $2.00.

Petition of intervention of state.—Filed 6th June, 1870.

Eighth district court for the parish of Orleans, La.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
The Board of Metropolitan Police et als.

The petition of intervention of the State of Louisiana, by Simeon Belden, attorney general of said state, which she prays to be allowed in the above entitled suit, with respect represents that she adopts plaintiff's petition, and prays that the injunction therein granted be made perpetual.

Petitioner further represents that the State of Louisiana is interested in a strict enforcement of the laws in reference to the slaughtering of animals for food in the parishes of Orleans, Saint Bernard, and Jefferson, and that a violation of said law would be of irreparable injury to intervenor; that her interests in seeing the laws sustained and respected is of higher importance than any money consideration, resting, as it does, upon the ground that protection is only given to the people, and dignity and force to government, when the laws are faithfully executed.

Therefore intervenor prays that the injunction herein sued out be made perpetual, at costs of defendants, and for general relief in the premises.

(Signed) S. BELDEN, *Att'y Gen'l.*

Order.

Let this petition of intervention be filed, and parties cited as prayed for.

New Orleans, June 6th, 1870.

(Signed) HENRY C. DIBBLE, *Judge.*

Citation.—Issued 7th June, 1870.

Citation.

The Crescent City Live Stock L'dg and Slaughter-house Company vs. The Board of Metropolitan Police et als. } No. 118.

STATE OF LOUISIANA,

Eighth district court for the parish of Orleans, in the city of New Orleans:

The Crescent City Live Stock Landing and Slaughter-house Company, through its attorney, J. P. Horner:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth disrrict court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the seventh day of June, in the year of our Lord 1870.

(Signed) J. CORPREW, *D'y Cl'k.*

Sheriff's return.—Filed June 10th, 1870.

Received June 7th, 1870, and on the eighth day of June, 1870, served a copy of the within citation and accompanying petition on the Crescent City Live Stock Landing and Slaughter-house Company, through J. P. Horner, attorney, in person.

Returned June 9th, 1870.

(Signed) J. W. B. LEECH, *D'y Sheriff.*

Sheriff's fees, $2.00.

Citation.—Issued 7th June, 1870.

Citation.

The Crescent City Live Stock Landing and Slaughter-house Company vs. Board of Metropolitan Police et als. } No. 118.

STATE OF LOUISIANA,
Eighth district court for the parish of Orleans,
in the city of New Orleans:

Hon. E. W. PIERCE, administrator of police:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the seventh day of June, in the year of our Lord 1870.

(Signed) J. CORPREW, *D'y Cl'k.*

Sheriff's return.—Filed June 9th, 1870.

Received June 7th, 1870, and on the eighth day of the same month and year served copy of the within citation and accompanying petition of intervention on E. W. Pierce, administrator of police, one of the defendants herein, by leaving the same at his office in the city hall, corner of St. Charles and Lafayette streets, in the hands of B. E. Meyers, his secretary, who informed me that the said Pierce was absent from his office at the time of said service.

Returned same day.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Sheriff's fees, $2 00.

Citation.—Issued 7th June, 1870.

Citation.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
The Board of Met. Police et als.
} No. 11.8

STATE OF LOUISIANA,
Eighth district court for the parish of Orleans,
in the city of New Orleans:

The Board of Metropolitan Police, through Hon. C. J. Dunn, president:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the seventh day of June, in the year of our Lord, 1870.

(Signed) J. CORPREW, *D'y Cl'k.*

Sheriff's return.—Filed June 9th, 1870.

Received June 7th, 1870, and on the eighth day of the same month and year served copy of the within citation and accompanying petition of intervention on the Board of Metropolitan Police, one of the defendants herein, through William George, the acting president, in person, who informed me that the president, Oscar J. Dunn, was sick.

Returned same day.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Sheriff's fees, $2.00.

Citation.—Issued June 7th, 1870.

Citation.

The Crescent City Live Stock Landing and Slaughter-house Co. vs. Board of Metropolitan Police et als. } No. 118.

Hon. S. C. EMLEY, administrator of commerce, City Hall:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the seventh day of June, in the year of our Lord 1870.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed June 9th, 1870.

Received June 7th, 1870, and on the eighth day of the same month and year served a copy of the within citation and accompanying petition of intervention on S. C. Emley, administrator of commerce, one of the defendants herein, in person.

Returned same day.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Sheriff's fees, $2.00.

Citation.—Issued 7th June, 1870.

Citation.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
The Board of Met. Police et als.
} No. 118.

STATE OF LOUISIANA,
Eighth district court for the parish of Orleans,
in the city of New Orleans:

THE CITY OF NEW ORLEANS, through its proper officer:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the seventh day of June, in the year of our Lord one thousand eight hundred and seventy.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed 9th June, 1870.

Received June 7th, 1870, and on the eighth day of the same month and year served copy of the within citation and accompanying petition of intervention on the city of New Orleans, one of the defendants herein, through S. C. Emley, administrator of commerce and acting mayor of said city, in person.

Returned same day.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Sheriff's fees, $2.00.

Order rule.—Issued June 8th, 1870.

Crescent City Live Stock Landing and Slaughter-house Co.
vs.
Board Metropolitan Police et als.
} No. 118.

On motion of Cotton and Levy and of Bellows and Mills, as *amicis curie*, and upon suggestion to the court, that the order herein issued, under the name of an injunction, is illegal, and not warranted by any law or precedent:

It is ordered, that the plaintiff show cause on Friday, the 10th inst., at 10 o'clock a. m., why the said order should not be vacated and annulled, as having been issued in error.

Sheriff's return.—Filed June 10th, 1870.

Received June 8th, 1870, and on the 9th day of June, 1870, served a copy of the within rule on plantiff herein by a personal service on J. P. Horner, esq., in person.

Returned June 9th, 1870.

(Signed) J. W. B. LEECH, *D'y Sheriff.*

Sheriff's fees, 30 cents.

Order rule.—Issued June 10th, 1870.

Eighth district court for the parish of Orleans.

Crescent City Live Stock L'dg and Slaughter House Company
vs.
Board of Metropolitan Police et als. } No. 118.

On motion of Geo. S. Lacey, city attorney and counsel for the city of New Orleans, E. W. Pierce, administrator of police, and S. C. Emley, administrator of commerce, and upon suggesting and showing to the court,

1st. That no good and lawful cause for issuing the injunction herein granted against appearers has been set forth and disclosed in the petition.

2nd. That the injunction herein granted is in violation of a certain writ of error, operating as a supersedeas, to which the plaintiffs are parties.

3rd. That the city of New Orleans cannot, through the writ of injunction, be made the instrumentality or agency wherewith to carry out the pretended rights and privileges of the plaintiffs, and the provisions of the act of the legislature, approved March 8th, 1869, not only for the reason that she is without the means of so doing, but because that power is given to the Board of Metropolitan Police, as averred in plaintiffs' petition.

4th. That the writ of injunction in requiring these appearers to "prohibit and prevent any and all persons from selling or offering to sell in the city of New Orleans, any animal meat for human food not slaughtered and inspected at the slaughter-house of petitioners," is an unwarranted and unlawful restraint upon the trade and business, not only of the citizens of Louisiana, but of the citizens of other States in the United States, who desire to bring to the city of New Orleans animal meat for human food slaughtered beyond the limits within which the plaintiffs claim to have an exclusive right and privilege.

5th. That the averments of the petition and affidavit thereunto annexed, in reference to these appearers, are untrue.

6th. That the writ of injunction improvidently, improperly, and illegally issued.

Citation.—Issued 7th June, 1870.

Citation.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
The Board of Met. Police et als. } No. 118.

STATE OF LOUISIANA,
Eighth district court for the parish of Orleans,
in the city of New Orleans:

THE CITY OF NEW ORLEANS, through its proper officer:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable Henry C. Dibble, judge of the said court, the seventh day of June, in the year of our Lord one thousand eight hundred and seventy.

(Signed) J. CORPREW, *D'y Clerk.*

Sheriff's return.—Filed 9th June, 1870.

Received June 7th, 1870, and on the eighth day of the same month and year served copy of the within citation and accompanying petition of intervention on the city of New Orleans, one of the defendants herein, through S. C. Emley, administrator of commerce and acting mayor of said city, in person.

Returned same day.

(Signed) PH. LACOSTE, *D'y Sheriff.*

Sheriff's fees, $2.00.

Order rule.—Issued June 8th, 1870.

Crescent City Live Stock Landing and Slaughter-house Co.
vs.
Board Metropolitan Police et als. } No. 118.

On motion of Cotton and Levy and of Bellows and Mills, as *amicis curie*, and upon suggestion to the court, that the order herein issued, under the name of an injunction, is illegal, and not warranted by any law or precedent:

It is ordered, that the plaintiff show cause on Friday, the 10th inst., at 10 o'clock a. m., why the said order should not be vacated and annulled, as having been issued in error.

Sheriff's return.—Filed June 10th, 1870.

Received June 8th, 1870, and on the 9th day of June, 1870, served a copy of the within rule on plantiff herein by a personal service on J. P. Horner, esq., in person.

Returned June 9th, 1870.

(Signed) J. W. B. LEECH, *D'y Sheriff.*

Sheriff's fees, 30 cents.

Order rule.—Issued June 10th, 1870.

Eighth district court for the parish of Orleans.

Crescent City Live Stock L'dg and Slaughter House Company
vs.
Board of Metropolitan Police et als. } No. 118.

On motion of Geo. S. Lacey, city attorney and counsel for the city of New Orleans, E. W. Pierce, administrator of police, and S. C. Emley, administrator of commerce, and upon suggesting and showing to the court,

1st. That no good and lawful cause for issuing the injunction herein granted against appearers has been set forth and disclosed in the petition.

2nd. That the injunction herein granted is in violation of a certain writ of error, operating as a supersedeas, to which the plaintiffs are parties.

3rd. That the city of New Orleans cannot, through the writ of injunction, be made the instrumentality or agency wherewith to carry out the pretended rights and privileges of the plaintiffs, and the provisions of the act of the legislature, approved March 8th, 1869, not only for the reason that she is without the means of so doing, but because that power is given to the Board of Metropolitan Police, as averred in plaintiffs' petition.

4th. That the writ of injunction in requiring these appearers to "prohibit and prevent any and all persons from selling or offering to sell in the city of New Orleans, any animal meat for human food not slaughtered and inspected at the slaughter-house of petitioners," is an unwarranted and unlawful restraint upon the trade and business, not only of the citizens of Louisiana, but of the citizens of other States in the United States, who desire to bring to the city of New Orleans animal meat for human food slaughtered beyond the limits within which the plaintiffs claim to have an exclusive right and privilege.

5th. That the averments of the petition and affidavit thereunto annexed, in reference to these appearers, are untrue.

6th. That the writ of injunction improvidently, improperly, and illegally issued.

7th. That a bond in a sufficient amount was not given, and the security upon the bond given is not good and solvent, and such as the law requires.

It is ordered that plaintiffs in injunction show cause, on Tuesday, the 14th day of June, A. D. 1870, at 10 a. m., why the writ of injunction herein granted should not be vacated, annulled, set aside, and held for naught, reserving to these appearers their recourse upon the injunction bond given by plaintiffs in injunction, for such damages as these appearers have sustained or may sustain by reason or on account of such writ.

Sheriff's return.—Filed June 13th, 1870.

Received June 10th, 1870, and on the 11th day of June, 1870, served a copy of the within order and rule on plaintiff herein, by a personal service on J. P. Horner, esq., their attorney.

Returned June 11th, 1870.

(Signed) J. W. B. LEECH, *D'y Sheriff.*

Sheriff's fees, $1.00.

Rule continued.

Extract from minutes June 10th, 1870.

Crescent City Live Stock Landing and Slaughter-House Company
vs.
Board of Metropolitan Police et als. } No. 118.

The rule taken by Messrs. Cotton & Levy et als., amicii curiae, on plaintiffs to show cause why the writ of injunction herein issued should not be dissolved.

It is ordered to be continued to Tuesday, the fourteenth instant, at 10 o'clock, a. m.

Rule to dissolve injunction.—Filed 14th June, 1870.

Eighth district court for the parish of Orleans.

Crescent City Live Stock L'dg and Slaughter-House Company
vs
The Board of Metropolitan Police et als. } No. 118.

Now comes the Board of Metropolitan Police, defendants, and join in the motion of the city of New Orleans for the dissolution of the injunction issued in this cause.

And for further grounds, suggests to the court that the said defendants have been and are subjected to a vast amount of litigation by reason of obedience to said writ; that suits claiming damages against the said Board and members thereof have been instituted

in which the amount of damages claimed exceeds the sum of fifty thousand dollars; that the bond in this case is insufficient for the protection of defendants in the full sum of eighty thousand dollars.

And further, that said suit is in all things unfair and inequitable in character; that by the terms and conditions of the act of incorporation of said plaintiffs, said plaintiffs are provided with means for their own protection, and are required to enforce their own privileges by fines and penalties, which innures in a great part to the benefit of said plaintiffs. That the object of said inspection was avowedly to enforce the said regulations and have enforced, and which is by these suits to be shifted upon these defendants.

And it is further suggested that said suit is defective for want of the proper parties defendants thereto; that the persons enjoined, whom in said injunction, by the terms thereof, these defendants are commanded to act, are not made parties defendants thereto, but omitted.

And further, that from the nature of the said writ it is impossible for said defendants to lawfully execute the same; that under the powers and privileges to be imposed for contempt this defendant is condemned to interfere with the property of third persons without the protection afforded by any writ or process of law directed against the persons so to be dealt with and effected; that by the terms of the said act of legislation those defendants to whom every power against such third persons is vested, already in said plaintiff; that the validity of said law, and the penalties therein prescribed, are seriously drawn in question in the present cause, and said defendants are without protection in enforcing the same.

Wherefore said defendants pray, with the said city of New Orleans, that said writ be quashed, vacated, and set aside.

(Signed) J. R.. BECKWITH, *Attorney.*

Rule discharged.

Extract from the minutes June 14th, 1870.

Crescent City Live Stock Landing and Slaughter-House Company
vs.
Board of Metropolitan Police et als. } No. 118.

The rule to dissolve and set aside the injunction herein issued, taken by the city of New Orleans; also the rule taken for the same purpose by Messrs. Cotton & Levy, and Fellows and Mills, amicii curiae, fixed for this day were called.

Present, Cotton and Levy, and Fellows and Mills, amicii curiae.

Present, Geo. S. Lacey, for plaintiff in rule and city of New Orleans.

Present, J. P. Horner, for defendant in rule and plaintiffs in suit.

Present, J. R. Beckwith, esq., attorney for the Board of Metropolitan Police, now joins the *the* city of New Orleans in the rule to dissolve the injunction, and files additional reasons for the dissolution of the injunction.

When, upon the suggestion of Cotton and Levy, and Fellows and Mills, that the city of New Orleans and the Board of Metropolitan Police, defendants herein, have come into court through counsel—

It is ordered by the court that the rule to dissolve the injunction herein taken by the said counsel as amicii curiae, filed 8th June, 1870, be discharged.

Motion to modify.

Extract from minutes June 14th, 1870.

Crescent City Live Stock L'dg and Slaughter-House Company
vs.
Board of Metropolitan Police et als. } No. 118.

On motion of J. P. Horner, esq., of counsel for plaintiffs—

It is ordered by the court that the following be made in this case on the minutes of the court, to-wit:

And now before the court comes the said plaintiff, and shows the court that it was not the intention of the plaintiffs in the writ of injunction to embrace within the provisions of that writ, salt or preserved meat slaughtered beyond the parochial limits of Orleans, Jefferson, and Saint Bernard, and to that extent plaintiffs in the writ consent to a modification to either party.

Rule submitted.

Extract from the minutes June 14th, 1870.

Crescent City Live Stock L'dg and Slaughter-House Company
vs.
Board of Metropolitan Police et als. } No. 118.

The rule taken by the city of New Orleans, and also to dissolve the injunction, was taken up and argued by consent.

When, after hearing pleadings and counsel, the matter was submitted and taken under advisement by the court.

Testimony.—Filed 14th June, 1870.

STATE OF LOUISIANA,
Eighth District Court:

Crescent City Live Stock Landing and Slaughter-house Company
vs.
City of New Orleans et als.
No. 118.

Testimony on rule to dissolve the injunction.—Filed 14th June, 1870.

C. A. Weed, being duly sworn deposes and says: Being shown the bond filed in this case, says the signature thereon is my proper handwriting. I am worth, over and above my debts, the sum of $3,000. I reside in the city of New Orleans.

No cross-examination.

Exception and answer of the city of New Orleans.—Filed June 18th, 1870.

Eighth district court of the parish of Orleans.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
Board of Metropolitan Police et als.
No. 118.

And now before the court comes the city of New Orleans, S. C. Emley, administrator of commerce, and E. W. Pierce, administrator of police, and shew the same, that the plaintiffs' petition rests upon a certain act of the Legislature of the State of Louisiana, among other things incorporating the "Crescent City Live Stock Landing and Slaughter-house Company," approved March 8th, 1869; that the said act is in violation of the constitution of the State of Louisiana, adopted in 1868, and article 14th, section 1, amendment to the Constitution of the United States, known as 14th amendment.

And therefore that plaintiffs' petition fails to disclose a good and legal cause of action.

Wherefore these appearers accept to the said petition, and pray to be hence dismissed with costs.

Should the foregoing exception be overruled, but not otherwise, then for answer to plaintiffs' petition these respondents deny each and every allegation therein contained, and upon the trial of this cause will require strict and legal proof of the same.

And for further and special answer the respondents also deny that they have countenanced or permitted any act to be done in violation of plaintiffs' legal rights, or in opposition to the act of

the Legislature of the State of Louisiana, and referred to in the petition.

They deny that they, or either one of them, have any power or authority whatever to carry out the provisions of the statute herein above referred to, or the requirements of the petition, and, being powerless, they aver that this suit, and the writ of injunction herein granted, are unjust, improper, and illegal, and ought to be dismissed.

And for further and special answer they say, that the act of the legislature approved March 8th, 1869, referred to in plaintiffs' petition, and by them relied on to sustain this action, is in violation of the constitution of the State of Louisiana, adopted in 1868, and article 14, section 1, of the Constitution of the United States, known as the 14th amendment. And for that reason is absolutely null and void, and without force and effect.

Wherefore these respondents, reserving their right of action against the plaintiffs' in injunction, and their security upon the injunction bond for all damages sustained by reason, or on account of, such writ, pray that the writ of injunction herein granted may be dissolved and held for naught; that plaintiffs' petition be dismissed; that judgment may be rendered in favor of these respondents, and against the Crescent City Live Stock Landing and Slaughter-house Company; that the said company be condemned to pay all costs; and that defendants have general relief in the premises.

(Signed) GEO. S. LACEY, *City Attorney.*

Exception and answer of city to intervention of State of Louisiana.—Filed June 18th, 1870.

Eighth district court for the parish of Orleans.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
The Board of Metropolitan Police et als. } No. 118.

And now before the court comes the city of New Orleans, S. C. Emley, administrator of police, and for exception and answer to the petition of intervention filed by the State of Louisiana, through Simeon Belden, attorney general of said state, they present the same averments and allegations as are contained in their exception and answer against plaintiffs' demand, and make such allegations and averments as a part of this exception and answer.

Wherefore excepting and answering in manner and form as these appearers have excepted and answered to plaintiffs' demand, they pray for a like judgment against the State of Louisiana, with costs and general relief, &c.

(Signed) GEO. S. LACEY, *City Attorney.*

Exception and answer of the Board of Metropolitan Police.—Filed 18th June, 1870.

Eighth district court for the parish of Orleans.

Crescent City Live Stock Landing and Slaughter-house Company
vs.
The Board of Metropolitan Police et als. } No. 118.

Now comes the defendant, the Board of Metropolitan Police, by J. R. Beckwith, attorney, and for peremptory exception to said plaintiffs' petition says, that all and singular the allegations in said plaintiffs' petition, taken together, do not constitute or set forth a course of action against said defendants as grounds for the allowance of any writ of injunction against said defendants, and pray that the action be dismissed with costs.

And in event said exception, above pleaded, be held insufficient in law, and not otherwise, said defendant for answer denies all and singular the allegations and matters set forth in said plaintiffs' petition, and prays judgment against said plaintiffs, with costs, and that the injunction herein be dissolved, reserving to said defendants all right of action for damages, either upon the board herein or against said plaintiffs.

(Signed) J. R. BECKWITH,
Attorney.

Rule Discharged.

Extract from minutes, 27 June, 1870.

Crescent City Live-Stock Landing and Slaughter-house Compay.
vs.
The Board of Metropolitan Police et als. } No. 118.

In the matter of the rule taken herein by the city of New Orleans, on the plaintiffs, to show cause why the writ of injuction herein issued, should not be vacated, annulled, and set aside, submitted to the court for determination, for the reasons orally assigned—

It is ordered by the court that the said rule be discharged.

Rule discharged and order to increase bond.

Extract from minutes, June 27, A. D. 1870.

Crescent City Live-Stock Landing and Slaughter-house Compay.
vs.
The Board of Metropolitan Police et als. } No. 118.

In the matter of the rule taken herein by the Board of Metropolitan Police, on the plaintiffs, to show cause why the writ of injunction herein issued, should not be vacated, annulled, and set aside, and further, why the bond furnished should not be increased, submitted to the court for determination, for the reasons orally assigned—

It is ordered by the court, that the rule, so far as the same refers to the writ of injunction, be dissolved. And it is further ordered by the court, that the plaintiffs shall increase the injunction bond herein, to the amount of twenty-five thousand dollars.

Certificate of Clerk.

STATE OF LOUISIANA,
Eighth District Court for the parish of Orleans.

I, Thomas Lynne, Clerk of the Eighth District Court for the Parish of Orleans, and as such duly commissioned and sworn, do hereby certify that the foregoing sixty-seven pages contain a true and correct transcript of all the proceedings had before the eighth district court, testimony, &c., evidence adduced, and all the documents filed in the case, wherein "The Crescent City Live-Stock Landing and Slaughter-house Company" is plaintiff and the Board of Metropolitan Police et als. are defendants, the same being numbered 118 on the docket of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this twenty-third day of September, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fifth year of the independence of the United States of America.

[SEAL.] THOMAS LYNNE,
Clerk of the 8th District Court for the Parish of Orleans.

Judge's certificate to the foregoing clerk's certificate.

I, Henry C. Dibble, sole judge of the Eighth District Court for the Parish of Orleans, do hereby certify that Thomas Lynne is clerk of the said court, and that the signature "Thomas Lynne" to the foregoing certificate is in the proper handwriting of him, the said clerk. To his official acts, as such full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

Given under my hand at the city of New Orleans, on this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and seventy.

HENRY C. DIBBLE, *Judge.*

Clerk's certificate to the foregoing judge's certificate.

I, Thomas Lynne, Clerk of the Eighth District Court for the Parish of Orleans, duly commissioned and sworn as such, do hereby certify that the Honorable Henry C. Dibble, whose name is signed to the foregoing certificate, is the sole judge of this court, and that he is duly commissioned and qualified as such, and I do further certify that said court is a court of record.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on the twenty-fourth day of September, in the year of our Lord, one thousand eight hundred and seventy, and the ninety-fifth year of the independence of the United States of America.

[SEAL.] THOMAS LYNNE,
Clerk.

AFFIDAVIT "X."

Supreme Court of the United States.

William Fagan et als., Plaintiffs in Error,
No. 479. vs.
The State of Louisiana, ex rel. S. Belden, Attorney General, Defendant in Error.

The undersigned, of the plaintiffs in error, being duly sworn, depose and say, that on the 9th of May, 1870, the above-entitled cause then pending in the Supreme Court of the State of Louisiana, on appeal from the Fifth District Court for the Parish of Orleans, was finally decided by the said supreme court adverse to the undersigned; that a writ of [error] from the Supreme Court of the United States to the said Supreme Court of the State of Louisiana was allowed affiants, removing the record and proceedings in said cause and all things concerning the same, from the said Supreme Court of the State of Louisiana to the Supreme Court of the United States, by his honor, Joseph P. Bradley, associate justice, a copy of which writ of error, with the necessary and approved bond, was lodged and filed in said Supreme Court of Louisiana in due time, so that the same should operate as a supersedeas; and that a copy of said writ was also, within ten days from said 9th of May, 1870, lodged in the said Fifth District Court for the Parish of Orleans, to wit, on the 16th of May, 1870, as will more at large appear by the record in this case in this honorable court and in the transcript of subsequent proceedings in the original case in the District Court of the Parish of Orleans, which is annexed to and made part of this affidavit, marked exhibit B.

Affiants further depose and say, that, notwithstanding said writ of error, having the force of a supersedeas, and subsequent to the filing of said copy of the writ of error, the said relator, Simeon Belden, attorney general, moved a transfer of the record from the Fifth District Court to the Eighth District Court for the Parish of Orleans, and proceeded in said eighth district court to take proceedings against affiants, and the judge of said court, Henry C. Dibble, proceeded to entertain and exercise jurisdiction in this cause, notwithstanding the protest of affiants and their demurring and excepting to the same, as more fully and at large appears in the record of subsequent proceedings, in exhibit marked

B, hereto annexed, as aforesaid, and to act adversely to affiants and their counsel for appearing for them and endeavoring to protect them in their rights, ordering the sheriff of the parish of Orleans, Thomas L. Maxwell, and instructing and requiring him to enforce the preliminary injunction issued in this case, and to prevent further violation of the same, or, in other words, to prevent these affiants and those associated with them and those in their employ and doing business with them from pursuing their usual and customary avocations and enjoy their rights of property and labor as other citizens of the State of Louisiana and of the United States could do.

And affiants further depose and say, that they and their associates have been for many years, in New Orleans and vicinity, engaged in the occupation and business, some of them in receiving, keeping, preserving, and selling beef-cattle, horses, sheep, swine, and other animals brought to the city of New Orleans, and the others in buying, slaughtering, and preparing animal food and vending the same in the markets of New Orleans and vicinity; that in the year 1869 they had formed themselves into a corporation, known as the Live-stock Dealers' and Butchers' Association of New Orleans, for the more feasible carrying on of their business, had purchased land fronting on the Mississippi river of the left or west bank thereof, at a cost of sixty thousand dollars, and had erected thereon wharves and landings for ships and steam vessels, and had constructed yards, pens, and stables, for the purpose of receiving, stabling, and preserving cattle and other animals, and had also built slaughter-houses and abattoirs in which to slaughter animals and prepare their food for market in New Orleans, and also erected dwellings for their workmen and those employed about the premises, all upon the land thus purchased, and were in the progress of making other constructions of a similar nature and extending those already made, and had, on the 27th of July last, already expended upwards of one hundred thousand dollars in said constructions and improvements, and had contracts for additional improvements to the extent of many more thousand dollars, which were stopped on or about that day by the said sheriff, through his deputies, acting under the order and requisition of the said judge of the 8th district court, based on the motion of the said attorney general; that the said sheriff of the parish of Orleans, acting as aforesaid, did, on or about the 27th of July, 1870, place one of his deputies in charge of the property and premises aforesaid, and prevented these affiants and their employés and associates from erecting any docks, ways, wharves, &c., on said premises; from receiving, keeping, yarding, or preserving any beeves, cattle, cows, or any other animals designed for human food in the parishes of Orleans, Jefferson, and St. Bernard, and from slaughtering any such animals in said parishes except at the building of the Crescent City

Live-stock Landing and Slaughter-house Company, and still has at this date an officer on the premises aforesaid, to enforce the requirements of the said order of the 8th District Court of the Parish of Orleans, as will more fully appear by the said sheriff's return of his execution of said order, found in the record aforesaid, marked exhibit B; and ever since the said 27th of July, 1870, and now, these affiants and their associates have been and are prevented, by the forcible execution of said order as aforesaid, from the enjoyment of their property and rights as hereinbefore more particularly described, and, as they believe, in contempt of the authority vested in this court by their said writ of error, and to their great damage and in an amount almost incalculable, and, unless relieved, of an indefinite duration.

And affiants further depose and say, that they are deprived of the use of their said property, and in a great measure thrown out of employment, and this notwithstanding their writ of error, as aforesaid, and their rights in the premises, and that their only remedy and relief is from this honorable court.

WILLIAM FAGAN,
MARTIN LANNES,
J. T. AYCOCK,
ADRIEN JEHLEN,
J. P. ROUEDE,
B. BEAUBAY,
G. TUJAQUE,
J. NEGUELAUCE,
P. SARTHOU,
DOMINIQUE VERGES,
ANDRÉ MAITHES,
F. CONLON,
B. DABAT,
PAUL ESTÉBEN,
LOUIS RUCH,
JOSEP D. BRODERICK,
his
MICHEL+PELTZ.
mark.

Witness: S. M. TODD, Jr.

Sworn to and subscribed before me, this twenty-seventh day of September, A. D. 1870.

[SEAL.]

CHAS. S. RICE,
U. S. Com. Dist. of La.

[Filed 17 October, 1870.]

EXHIBIT B.—Annexed to affidavits marked "X" and "Z," made before me this 27th September, 1870.

[SEAL.] CHAS. S. RICE,
U. S. Comm'r Dist. of La.

STATE OF LOUISIANA:

EIGHTH DISTRICT COURT FOR THE PARISH OF ORLEANS.

STATE OF LOUISIANA, EX REL. S. BELDEN, ATTORNEY GENERAL,

VS.

WILLIAM FAGAN ET ALS.

No. 122.

SIMEON BELDEN, ESQ., ATT'Y GEN'L,
For Plaintiff in Rule.
J. Q. A. FELLOWS, ESQ., AND
JOHN A. CAMPBELL, ESQ.,
For Defts. in Rule.

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STATE OF LOUISIANA,
Eighth district court for the parish of Orleans:

State of Louisiana, ex rel. Att'y General,
vs.
Wm. Fagan et als. } No. 122.

Motion to transfer.—Filed June 2d, 1870.

On motion of S. Belden, attorney general, and on suggesting to the court that this is suit by injunction, the jurisdiction over which by law at this time belongs exclusively to the eighth district court for the parish of Orleans—

It is ordered by the court that the record, pleadings, documents, papers, and everything belonging to this suit, be transferred to the eighth district court for the parish of Orleans.

(Extract from the minutes of fifth district court for the parish of Orleans.)

United States of America, ss:

The President of the United States to the hon. the judges of the supreme court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, between the State of Louisiana ex relatione S. Belden, attorney general, plaintiff, and Paul Estaban, Louis Ruch, Jean P. Roude, William Maylie, Solomon Fernberg, Barthelm Baubey, Wm. Fagan, Joseph Daniel Broderick, Nicholas Sichel, Martin Lannes, Joseph Getzinger, Jordan T. Aycock, Dominique Verges, the Live Stock Dealers and Butchers' Association of New Orleans, and Charles Cavaroc, defendants, a manifest error hath happened to the great damage of the said Paul Estaban, Louis Ruch, Jean P. Roude, William Maylie, Solomon Fernberg, Bart'w Beauby, William Fagan, Joseph D. Broderick, Nicholas Seibel, Martin Lannes, Joseph Getzinger, Jordan T. Aycock, Dominique Verges, the Live Stock Dealers and Butchers' Association of New Orleans, and Charles Cavaroc, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next in the said Supreme Court to be then and there held; that the record and proceedings afore-

said being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, chief justice of the said Supreme Court of the United States, this thirteenth [SEAL.] day of May, in the year of our Lord one thousand eight hundred and seventy.

(Signed) D. URBAN,
Clerk of the United States Circuit Court for the District of Louisiana.

A true copy:

ANT. JULIAN, *Deputy Clerk.*

Filed May 16th, 1870.

Eighth district court.

Rule to show cause why judgment should not be executed. Filed 15th June, 1870.

On motion of Simeon Belden, attorney general of Louisiana, and on suggesting to the court that on the 27th July, 1869, the State of Louisiana instituted suit by injunction in the fifth district court for the parish of Orleans, Louisiana, against Paul Estaban, Louis Ruch, Jean Pierre Roude, William Maylie, Solomon Finberg, Bartholomew Beaubay, William Fagan, Joseph Daniel Broderick, Nicolas Seibel, Martin Lannes, Joseph Gitzenger, Jordan T. Aycock, and Dominique Verges, being numbered on transfer in this court 122, and in the said 5th court 809, enjoining and restraining said defendants from leasing the tract of land known as the Delery plantation, belonging to Charles Cavaroc, from using the same for the purposes of said "Live Stock Dealers and Butchers' Association, as set forth in said petition, and individually and collectively from erecting any docks, ways, wharves, landings, yards, pens, stables, and other enclosures for the landing, receiving, stabling, yarding, keeping and preserving any beef cattle, cows, sheep, swine, or other animals designed for food in the parishes of Orleans, Jefferson, and St. Bernard," and they were also prohibited and enjoined from "slaughtering any beef cattle, cows, sheep, swine, or any other animals intended for food in any of the markets of the parishes of Orleans, Jefferson, and St. Bernard."

And plaintiff would further suggest that Chas. Cavaroc, in the same suit, was also enjoined from selling or leasing said Delery plantation for the purposes set forth in the pretended act of incorporation of the Live Stock Dealers and Butchers' Association, being the purposes for which they were enjoined, as recited above in this rule.

The state further suggests that said injunction was tried in the fifth district court for the parish of Orleans, and judgment rendered in favor of plaintiff, the State of Louisiana, by Hon. Charles Leaumont, judge of said court, and which judgment on appeal has been reaffirmed by the supreme court of the State of Louisiana, and by said judgments the said defendants are restrained and enjoined from doing any of the things mentioned and recited in this rule, and the petition in this suit. That said judgments are executory.

The State of Louisiana, by the attorney general as aforesaid, further suggests that, notwithstanding said injunction, said defendants have erected docks, ways, wharves, landings, yards, pens, stables, and other enclosures for the landing, receiving, stabling, yarding, keeping, and preserving beef cattle, hogs, sheep, cows and other animals in the parishes of Orleans, Jefferson, and St. Bernard, and are, besides this, slaughtering beeves, cattle, cows, sheep, swine, and other animals intended for food and sold in the markets of the parishes of Orleans, Jefferson, and St. Bernard, and that said Charles Cavaroc has violated said injunction, and is now in open violation of said injunction and decrees as aforesaid, by allowing the use of said plantation for the purposes above stated.

That said buildings, etc., were erected in violation of said injunction, for at the time the same was sued out, nothing had been done toward the erection of buildings and the slaughtering of animals, but, as it appears, with a studied determination to disregard the mandates of law, left their former places of business and erected the slaughter-houses in question at the precise spot where prohibited, and when completed commenced and continued slaughtering and are now slaughtering in the utmost contempt of law, the injunction sued out against them as aforesaid, and the decrees of both the district and supreme court of the State.

It is therefore ordered that all the parties defendants, herein named, show cause on Saturday, the 18th day of June, 1870, at 10 o'clock a. m., why the decree rendered in this suit and affirmed by the supreme court of Louisiana should not be executed at once, and the full force and effect of said decree be carried into immediate execution as required by law, and defendants prohibited from doing any further the acts prohibited, as set forth in plaintiff's petition, and decree of 5th district court as aforesaid.

(Extract from minutes.)

A true copy:

J. CORPREW, *D'y Clerk.*

Sheriff's return on rule.—Filed June 18th, 1870.

Received June 16th, 1870, and on the seventeenth day of same month and same year, I served true copies of the within rule

personally on the following named defendants: Joseph Gitzinger, Jordan T. Aycock, and William Fagan.

Returned same day.

A. BERNOUDY, *D'y Sheriff.*

And on the seventeenth day of same month and same year, I served a true copy of the within rule on the defendant, Martin Lannes, personally.

Returned same day.

G. LACOSTE, *D'y Sheriff.*

And on the 17th day of June, 1870, I served a true copy of the within rule on Dominique Verges, one of the defendants herein, by leaving the same at his domicile, on Chippewa, between Harmony and Pleasant streets, in the hands of his wife, a person apparently above fourteen years of age, living and residing in the same domicile, said defendant being absent from home at the time of said service; all of which facts connected with this service I learned by interrogating the said Mrs. Verges.

Returned same day.

G. LACOSTE, *D'y Sheriff.*

And on the 17th day of June, 1870, I served a true copy of the within rule on Jean Pierre Roude, one of the defendants herein, by leaving the same at his domicile, corner of Constantinople and Tchoupitoulas streets, in the hands of Mary Jent, a person apparently above fourteen years of age, living and residing in the same domicile, whose name and other facts connected with this service I learned by interrogating her, said defendant being absent from home at the time of said service.

Returned same day.

G. LACOSTE, *D'y Sheriff.*

And on the 17th day of June, 1870, I served a true copy of the within rule on Daniel Broderick, one of the defendants herein, by leaving the same at his domicile, corner of Fulton and Washington streets, in the hands of his wife, a person apparently above fourteen years of age, living and residing in the same domicile, said defendant being absent from home at the time of said service; all of which facts connected with this service I learned by interrogating the said Mrs. Broderick.

Returned same day.

G. LACOSTE, *D'y Sheriff.*

And on the 17th day of June, 1870, I served true copies of the within notice of rule on defendants, William Maylie and Bartholemew Beaubay, in person.

Returned same day.

JOSEPH BOURGEOIS, *D'y Sheriff.*

And on the 17th day of June, 1870, I served a true copy of the within rule on defendant, Paul Estaban, by leaving the same at his domicile on Apollo street, between Toledano and Louisiana avenue, in the hands of Miss Camille Estaban, his daughter, a person apparently over the age of fourteen years, living and residing in said domicile, defendant being absent from home at the time of said service; all of which facts connected with this service I ascertained by interrogating said Miss Camille Estaban.

Returned same day.

JOSEPH BOURGEOIS, *D'y Sheriff.*

And on the 17th day of June, 1870, I served a true copy of the within rule on defendant, Louis Ruch, by leaving the same at his domicile, on Chippewa street, between Sixth and Seventh streets, in the hands of Mrs. Louis Ruch, his wife, a person apparently over the age of fourteen years, living and residing in said domicile, defendant being absent from home at the time of said service; all of which facts connected I ascertained by interrogating said Mrs. Louis Ruch.

Returned same day.

JOSEPH BOURGEOIS, *D'y Shereff.*

And on the 17th day of June, 1870, I served a true copy of the within rule on the defendant, Solomon Firnberg, by leaving the same at his domicile, 31 Washington street, in the hands of Mrs. Solomon Firnberg, his wife, a person apparently over the age of fourteen years, living and residing in said domicile, defendant being absent from home at the time of said service; all of which facts connected with this service I ascertained by interrogating said Mrs. Solomon Firnberg.

Returned same day.

JOSEPH BOURGEOIS, *D'y Sheriff.*

And on same day served a like copy on Nicolas Seibel, by personal service on his wife, at the French market, while attending to stall No. 159 of said market, at which time she informed me that her husband was absent from the state, and that no service could be made at domicile, for no one would be there present to whom proper service could be made. This information is also obtained from others present.

Returned same day.

G. LACOSTE, *D'y Sheriff.*

And on the 17th day of June, 1870, I served a true copy of the within rule for Live Stock Dealers and Butchers' Association, through its proper officer, on Paul Estaban—I was told he was president of said association—by leaving the same at his domicile on Apollo street, between Toledano and Louisiana avenue, in

companies this notice, in the above entitled case is fixed for trial on the 23d day of June, 1870, at 10 o'clock a. m.

J. D. TAYLOR, *D'y Clerk.*

Sheriff's return on notice of trial.

Received June 22d, 1870, and on the same day, month, and year, served a copy of the within notice of trial and accompanying rule on Charles Cavaroc, one of the defendants herein, through his agent, (son,) C. Cavaroc, jr., who accepted service of same, and whose name and other facts connected with this service I ascertained by interrogating him, the said C. Cavaroc being absent from the city at the time of said service, and I was further informed by his (son) agent that the said Chas. Cavaroc has no domicile in the parish of Orleans for the time being.

Returned same day.

P. AD. FORTIER, *D'y Sheriff.*

Exceptions.—Filed Thursday, June 23d, 1870.

State of Louisiana, ex rel. S. Belden, Attorney General, vs. William Fagan et als. } No. 122.

No. 809 in the 5th district court and transferred to 8th district court.

Protesting against the jurisdiction of this court to proceed herein.

The several defendants by their attorneys come and decline the jurisdiction of the eighth district court in this cause, because they say that heretofore, on the 11th day of May, 1870, this cause was pending in the supreme court of the State of Louisiana, and that a final judgment was rendered in the said cause in the said court on the 11th day of May, 1870.

That immediately upon the rendition of the final judgment in the said supreme court of the State of Louisiana against the said defendants, these defendants sued out a writ of error to the Supreme Court of the United States, under the 25th section of the judiciary act of Congress of the 24th of September, 1789, under and by the authority and allowance of the Honorable J. P. Bradley, one of the justices of the said Supreme Court of the United States; and that the said justice signed the requisite citations, and approved a sufficient bond for the security of the said plaintiff, according to the acts of Congress for taking writs of error to the Supreme Court aforesaid, as a supersedeas, and that a copy of the writ of error was lodged with the clerk of the Supreme Court for the plaintiffs in the said cause in due form of law; that all of this was done and completed within ten

days from the rendition of the said judgment in the said supreme court of the State of Louisiana as aforesaid, all of which will fully appear by the record and proceedings remaining in the said supreme court, which they are ready to produce.

And these defendants aver that by operation of said proceedings in the said supreme court of Louisiana, and the effect of the writ of error of the Supreme Court of the United States, the said Supreme Court of the United States became fully possessed and has entire cognizance of all further acts and proceedings in the cause aforesaid, and that it is not competent for the 5th district court or the 8th district court to proceed with the same or to make any order for the execution of the said judgment of said supreme court of the state or the 5th district court for the parish of Orleans.

And these defendants further say that these defendants answer if any jurisdiction be taken, and only in that case, that they are entitled under the Constitution and laws of the United States to all the rights and privileges secured and protected by the first section of the 14th amendment of the Constitution of the United States, and to all the rights, privileges, and immunities secured and protected by the 1st section of the act of Congress of the United States, which became a law on the 9th day of April, 1866, and the rights secured in the act of Congress of the United States, approved May 31st, 1870, for the security of the rights of persons to make contracts, dispose of property, and to have, hold, and enjoy the same on full and equal terms; that the objects and design of the rule and of the prayer of the same is to deprive these defendants from enjoying and maintaining these rights, and to deprive them of the same and to subject them to penalties therefor; and that the grant of the order aforesaid would be to oust them from the possession and enjoyment thereof in favor of the Crescent City Live Stock Landing and Slaughter-house Company.

These defendants aver that all the acts done by them as charged have been done in the lawful pursuit of their avocation of live-stock dealers, and for the purpose of conducting and carrying on the business of preparing and dressing animal food, below the United States barracks, on the east bank of the Mississippi river, in the parishes of Orleans and St. Bernard, and for vending the same in the public markets on the same terms as the said last named corporation.

That it is a lawful avocation that they have followed for years before the 1st June, 1869, and which they are, by the Constitution and laws, entitled to conduct and carry on, and that the proposed rule asks for acts and orders violative of these rights, and intended to deprive them of the same.

That the allowance of said acts and orders are in derogation

of their rights aforesaid, and they pray judgment of said rule, and that the same may be dismissed.

FERGUS FUSILIER,
For self.
ALBERT VOORHIES,
Attorney for C. Cavaroc.
FELLOWS & MILLS
COTTON & LEVY.
CAMPBELL, SPOFFORD & CAMPBELL,
For Defendants.

Note of Evidence.—Filed 23d June, 1870.

It is admitted that the facts in regard to the writ of error, as stated in the answer to this rule, are true.

Plaintiff offers in evidence the consent entered into between the parties to this suit, to be filed.

It is also admitted that the defendants in rule are engaged in the business of slaughtering, at a point below the United States barracks, partly within the parish of Orleans and partly within the parish of St. Bernard, and that all of the defendants, except C. Cavaroc, are pursuing the occupation of butchers, as set forth in their answer.

Extract from minutes.—Thursday, June 23d, 1870.

State of Louisiana, ex rel. S. Belden, Attorney General, vs. William Fagan et als. } No. 122.

The rule taken in this case by the attorney general on the defendants to show cause why the decree rendered in this suit, and affirmed by the supreme court of this state, should not be executed and the full force and effects of said decree be carried into execution, as required by law, continued to this day, came on.

Present, S. Belden, for plaintiffs in rule.
" Cotton & Levy and J. Q. A. Fellows, for defendants in in rule, except C. Cavaroc.
" F. Fusilier, for C. Cavaroc.

Then, after hearing counsel, the court, considering the law and the evidence to be in favor of the defendants—

It is ordered that the rule be discharged for the reason that a writ of error to the Supreme Court of the United States, operating as supersedeas, has been granted from the final decree of the supreme court of the state.

(Extract from minutes.)

Order Rule.—June 23d, 1870.

On motion of Simeon Belden, Attorney General of the State of Louisiana, and on suggesting to the court that, on the 27th day of July, 1869, the State of Louisiana, by said attorney general, instituted suit by injunction, No. 809 in Fifth District Court for the Parish of Orleans, and now No. 122 on the docket of this honorable court, against Paul Esteban, Louis Ruch, Jean Pierre Roude, Wm. Maylie, Solomon Finberg, Bartholemew Beaubay, William Fagan, Joseph Daniel Broderick, Nicholas Seibel, Martin Lannes, Joseph Gitzinger, Jordan T. Aycock, Dominique Verges, and Charles Cavaroc, enjoining and restraining them from leasing the tract of land known as the Delery plantation, belonging to said Charles Cavaroc, located and described in said suit by injunction, and from using the same for the purposes of the "Live-stock Dealers and Butchers' Association," a pretended corporation composed of all the above persons, except Charles Cavaroc, owner of said Delery plantation, and individually and in their said corporate capacity, from erecting any docks, ways, wharves, landings, yards, pens, stables, and other enclosures for the landing and slaughtering, receiving, stabling, yarding, keeping, and preserving any beef cattle, cows, sheep, swine, or other animals designed for food in the parishes of Orleans, Jefferson, and St. Bernard, and from slaughtering amy beeves, cattle, cows, sheep, or swine, or any other animals intended for food in the markets of Orleans, Jefferson, and St. Bernard.

The state, by the attorney general, as aforesaid, suggests that said injunction is still in full force and operation against all of said defendants above named.

Now the state aforesaid further suggests that notwithstanding said injunction, prohibiting and restraining them as aforesaid, they have erected docks, ways, wharves, landings, yards, stables, and other enclosures for the landing, receiving, stabling, yarding, keeping, and preserving of beeves, cows, sheep, swine, and other animals designed for food in the parishes of Orleans, Jefferson, and St. Bernard; and have slaughtered, and are still slaughtering, beeves, cattle, cows, sheep, swine, and other animals destined for food in the parishes of Orleans, Jefferson, and St. Bernard, all in violation of said injunction, and in contempt of the authority and orders of this honorable court, and with the studied and malicious purpose of disregarding the mandates of this honorable court, as herein complained of.

It is therefore ordered by the court that Paul Esteban, Louis Ruch, Jean Pierre Roude, William Maylie, Solomon Finberg, Bartholemew Beaubay, William Fagan, Jos. Daniel Broderick, Nicholas Seibel, Martin Lannes, Joseph Gitzinger, Jordan F. Aycock, Dominique Verges, and Charles Cavaroc, do show cause, on the 27th day of June, 1870, at 10 o'clock a. m., why

they should not be punished for contempt of the authority of this honorable court in violating said injunction in the manner herein set forth, by fine and imprisonment, to the end that the injunction be enforced and the authority of law maintained.

(Extract from minutes.)

Sheriff's return on order rule.

Received June 24th, 1870, and on the 25th day of June, 1870, I served a true copy of the within rule on Wm. Fagan, by leaving the same at his domicile, 488 Magazine street, in the hands of his wife, Mrs. Wm. Fagan, a person apparently over the age of fourteen years, living and residing in the said domicile, defendant being absent from home at the time of said service; all of which facts connected with this service I learned by interrogating the said Mrs. William Fagan.

Returned same day.

A. BERNOUDY, *D'y Sheriff.*

And on the 25th day of same month and year served copy of the within rule, personally, on Jean Pierre Roude; and on the 25th day of same month and year served copy of the within rule on Jordan T. Aycock, by leaving the same at his domicile on Louisiana avenue, between Live Oak and Laurel streets, in the hands of Maria Collins, a person apparently over the age of fourteen years, living and residing in said domicile, and whose name and other facts connected with this service I learned by interrogating her, said defendant being absent from home at the time of said service.

Returned same day.

J. PAULIN EXNECIOS, *D'y Sheriff.*

And on 25th day of same month and year served copy of within rule on Joseph Gitzinger, by leaving the same at his domicile, corner of Laurel and Louisiana avenue, in the hands of Mrs. W. A. Wilkins, a person apparently over the age of fourteen years, living and residing in said domicile, and whose name and other facts connected with this service I learned by interrogating her, said defendant being absent from home at the time of said service.

Returned same day.

J. PAULIN EXNECIOS, *D'y Sheriff.*

And on 25th day of same month and year served copy of the within rule on Nicholas Seibel, by leaving the same at his domicile, on Laurel, between Harmony and Pleasant streets, in the hands of George Scheiner, a person apparently over the age of fourteen years, living and residing in said domicile, and whose

name and other facts connected with this service I learned by interrogating him, the said defendant being absent from home at the time of said service.

Returned same day.

J. PAULIN EXNECIOS, *D'y Sheriff.*

And on the 25th day of same month and year served copy of the within rule on Dominique Verges, by leaving the same at his domicile, on Chippewa street, between Harmony and Pleasant streets, in the hands of his wife, a person apparently over the age of fourteen years, living and residing in said domicile, and whose name and other facts connected with this service I learned by interrogating her, said defendant being absent from home at the time of said service.

Returned same day.

J. PAULIN EXNECIOS, *D'y Sheriff.*

And on the 25th day of same month and year served copy of the within rule on Joseph Daniel Broderick, by leaving the same at his domicile, corner of Washington and Fulton streets, in the hands of his wife, a person apparently over the age of fourteen years, living and residing in said domicile, and whose name and other facts connected with this service I learned by interrogating her, said defendant being absent from home at the time of said service.

Returned same day.

J. PAULIN EXNECIOS, *D'y Sheriff.*

And on the 25th day of same month and year served copy of the within rule on Solomon Finberg, by leaving the same at his domicile, No. 31 Washington street, in the hands of his wife, a person apparently over the age of fourteen years, living and residing in said domicile, and whose name and other fact connected with this service I learned by interrogating her, said defendant being absent from home at the time of said service.

Returned same day.

J. PAULIN EXNECIOS, *D'y Sheriff.*

And on the 25th day of same month and year served copy of the within rule on Paul Esteban, by leaving the same at his domicile, Carondelet street, between Louisiana avenue and Toledano, in the hands of Miss Camille Esteban, a person apparently over the age of fourteen years, living and residing in said domicile, and whose name and other facts connected with this service I learned by interrogating her, said defendant being absent from home at the time of said service.

Returned same day.

J. PAULIN EXNECIOS, *D'y Sheriff.*

And on the 25th day of June, 1870, I served copies of the within rule on Louis Ruch and Martin Lannes in person.

Returned same day.

JOSEPH BOURGEOIS, *D'y Sheriff.*

And 25th day of June, 1870, I served copy of the within rule on Wm. Maylie, by leaving the same at his domicile, No. 67 North Market street, in the hands of Bernard Maylie, his brother, a person apparently over the age of fourteen years, living and residing in said domicile, defendant being absent from home at the time of said service; all of which facts connected with this service I learned by interrogating said Bernard Maylie.

Returned same day.

JOSEPH BOURGEOIS, *D'y Sheriff.*

And on 25th day of June, 1870, I served copy of the within rule on Bartholemew Beaubay, by leaving the same at his domicile, 280 Dumaine street, in the hands of Mrs. B. Beaubay, his wife, a person apparently over the age of fourteen years, living and residing at said domicile, defendant being absent from home at the time of said service; all of which facts connected with this service I learned by interrogating said Mrs. B. Beaubay.

Returned same day.

JOSEPH BOURGEOIS, *D'y Sheriff.*

And on the 25th day of June, 1870, I served a copy of within rule on Charles Cavaroc, by leaving the same at his place of business, on Exchange alley, near Canal, in the hands Charles Cavaroc, jr., his son, a person apparently over the age of fourteen years, said Charles Cavaroc being out of the city, in Europe; all of which facts connected with this service I learned by interrogating said Charles Cavaroc, jr.

Returned same day.

JOSEPH BOURGEOIS, *D'y Sheriff.*

No service could be made at the domicile of Charles Cavaroc, the same being vacated, there being no person there on whom service could be made.

J. F. DICK, *D'y Sheriff.*

Exception and answer to rule for contempt.—Filed 27th June, 1870.

State of Louisiana, ex. rel. S. Belden, Attorney General, vs. William Fagan et als. } No. 122.

And the defendants personally cited herein on rule of the Attorney General, to show cause why they should not be pun-

ished for contempt of the authority of the honorable court, by way of declinatory exception, say:

1st. That this court has no jurisdiction in the matter in controversy, inasmuch as the record of suit No. 809, of the fifth district court, parish of Orleans, entitled: State of Louisiana, ex. rel. S. Belden, Attorney General, was not legally brought into or filed in this court, but that the act of the Attorney General in thus doing is in violation of law and the rights of these respondents.

2d. That the state courts of Louisiana, including this court, are wholly divested of jurisdiction by a writ of error, with the force of a supersedeas, allowed by the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, on the 13th day of May, 1870, to the supreme court of Louisiana, as to the judgment and decree of said supreme court in the matter in controversy in the above entitled and numbered suit.

3d. That if jurisdiction exists in any court other than the Supreme Court of the United States, it exists in the circuit court of the United States, district of Louisiana, by virtue of a petition filed herein, for the removal of any proceedings to be had in said court, on the 21st of June, 1870.

And should these exceptions to the right of the court not be maintained, then the defendants cited herein to answer this rule object to the Attorney General, or any of the counsel assisting him, appearing herein, or to any one appearing herein on behalf of the Crescent City Live Stock Landing and Slaughter-house Company, because said Attorney General and said other attorneys appearing herein are in contempt and open defiance of a writ of injunction ordered by the honorable the 3d district court, parish of Orleans, in suit No. ——, of the docket of that court, entitled Charles Cavaroc vs. S. Belden, Attorney General, et als., and now appearing in this court under the above title as No. 120; and that neither he nor they can be allowed to appear herein as prosecuting a rule for contempt until they first shall purge themselves of contempt as to the injunction in favor of these respondents in said suit, and in suits No. 1833, entitled "The Live Stock Dealers and Butchers' Association of New Orleans vs. The Crescent City Live Stock Landing and Slaughter-house Company and Geo. W. Carter; and in suit No. 1537, entitled Inbaw, Aycock & Co. vs. The Crescent City Live Stock Landing and Slaughter-house Company, both of the docket of the seventh district court, parish of Orleans, and other cases instituted in the said seventh district court, parish of Orleans, vs. the said Crescent City Live Stock Landing and Slaughter-house Company et als, numbered from 1548 to 1857, inclusive, and in which suits there are injunctions pending, untried against said Crescent City Live Stock Landing and Slaughter-house Company, its directors, agents, employees, and attorneys from interfering with, directly or in-

directly, or in any manner from preventing these respondents and others in the pursuit of the lawful business, to wit: receiving, landing, slaughtering, and preparing for food, beeves, cattle, sheep, swine, and other animals, and selling the same in the parishes of Orleans, Jefferson, and St. Bernard, and especially at the place on the east bank of the Mississippi river below the United States barracks.

That the Attorney General is precluded from taking the rule for contempt herein, because he had agreed with the counsel for respondents and had assured respondents themselves, before this case was tried in the fifth district court for the parish of Orleans, "to abide the result, so far as applicable, of the final decision in any and (or) all of six cases," in which the Crescent City Live Stock Landing and Slaughter-house Company are engaged or intended as against any of the other parties, either as plaintiffs or defendants in these six cases, and among which other parties are included these respondents; that he had agreed to take no steps to enforce his injunction 'till the decision in this or one of the other six suits should become final; that the decision neither in this nor in any of the other five cases in the supreme court of the state are final, but are now under the writ of error sued out and working herein as a supersedeas.

That these respondents have committed no contempt of the authority of this honorable court, and pray to be discharged from this rule with their costs.

Exceptions of C. Cavaroc to rule for contempt.— Filed 27th June, 1870.

State of Louisiana, ex rel. S. Belden, Attorney General, vs. William Fagan et als. } No. 122.

And now comes into court, by his counsel, undersigned, C. Cavaroc, one of the defendants in the rule herein taken for contempt, who respectfully excepts to answering said rule for this, that he has not been served therewith in the manner prescribed by law, and that the service thereof is insufficient and illegal.

Wherefore he prays to be hence dismissed with costs.

FERGUS FUSELIER,
Atty. for C. Cavaroc.

Extract from minutes.

MONDAY, 27th June, 1870.

State of Louisiana, ex rel. Attorney General Belden, vs. William Fagan, et als. } No. 122.

The rule taken by the plaintiffs on the defendants to show

cause why they should not be punished for contempt, fixed for this day for trial, came on.

Present: S. Belden, for plaintiff; Cotton & Levy and Fellows & Mills for all the def'ts, except C. Cavaroc; F. Fuselier, esq., for Cavaroc.

Defendants now file exceptions for the trial of the rule, which exceptions being overruled, the trial of the rule was proceeded with.

When, after hearing pleading, evidence, and counsel, the further hearing of the rule was continued till to-morrow, at 10 o'clock a. m.

Answer to rule for contempt.—Filed 27 *June*, 1870.

State of Louisiana, ex rel. S. Belden, Att'y Gen.,
vs.
William Fagan et als. } No. 122.

Now into court comes the defendants in rule taken by attorney general on them, to show cause why they should not be punished for contempt, &c., and for answer pleads—

1st. They disclaim any intention of committing a contempt of the authority of this honorable court.

2d. They specially plead that this honorable court is divested of jurisdiction in the cause by reason of the writ of error having been taken from the decision of the supreme court of the State of Louisiana to the Supreme Court of the United States.

3d. The State of Louisiana, through the attorney general, cannot enforce the injunction sued out in this case against these relators, because the act of the legislature under which he is proceeding is illegal, unconstitutional, null and void, and violates the 14 and 15 amendments of the Constitution of the United States, and the acts of Congress passed relative thereto and to carry into effect and enforce the same.

4th. The decision of the supreme court is not final and cannot be enforced, nor can the writ of injunction taken out in the above case be enforced until the final decision of the cause by the Supreme Court of the United States.

5th. There is an express agreement between these respondents and the attorney general, Simeon Belden, that they should not be disturbed in the erection of the building in the petition and rule, the exercise and conducting their business at said place, their purchase from Charles Cavaroc, during the pendency of this litigation; and under positive agreement and promise your relators represent to this honorable court they have been acting; and they specially plead this agreement in bar of any further proceedings on the part of the attorney general until the cause is finally disposed of by judgment of the Supreme Court of the United States.

Testimony.—Filed 27th June, 1870.

Jordan T. Aycock, being duly sworn, deposes and says:

I am one of the parties defendants in this case. I am one of the principal and active parties ever since the litigation commenced—about the time of the institution of the suit—afterwards in the fifth district court—State of Louisiana vs. Wm. Fagan et als, and No. 122 of this court.

I had various conversations with the attorney general on the subject of this suit and the slaughter-house controversy.

He has told me on various occasions that he was sorry that he ever had anything to do with the controversy; he has also told me that he would not bother us in the erection of our building; also has told me he was enjoined not to do so by the 3d district court.

These conversations took place last summer and fall.

The first conversation was had about one day after the injunction had been sued out by the state.

Mr. Cavaroc had been building under our directions.

As soon as the Live Stock Dealers and Butchers' Association was organized, they took out an injunction against the Crescent City Live Stock Landing and Slaughter-house Company, and the object was to erect the buildings and carry on the stock and slaughtering business, and we did actually commence these.

The injunction on the part of the state stopped us, and afterwards, by consent of the attorney general, who said that he would not bother us, we went on and were still doing so on Saturday; as I stated before, he said he would not bother us.

Question. Did the attorney general give you his consent to the slaughtering of animals and the carrying on the business of butchering at the Cavaroc plantation after the buildings were erected?

Answer. Last summer at various times he gave his consent to erect and occupy our buildings for the business that we designed them for, and after the injunction from the third district court he said that that stopped him from proceeding against the place, if he felt so disposed.

I reported this conversation to the parties in interest—the board. After this interview we went on and built, and we bought the tract of land at the Delery plantation. The company has expended large amounts of money since these conversations with the attorney general were had, and we were at work there on Saturday, and I presume they are at work there to-day in the erection of buildings. We have a contract well nigh completed.

Cross-examination by Attorney General.

We purchased this place—that is, "The Live Stock Dealers and Butchers' Association"—from Chas. Cavaroc for the pur-

poses already stated: to erect buildings suitable for carrying on the business of receiving, stabling, and slaughtering cattle and other animals destined for sale and food, and for other purposes.

We purchased this property, I think, in February, 1870; I cannot tell the exact time. We began actively to build early last summer, but it was checked up by the injunction of the State vs. Fagan et als.

We did not begin to build until after the organization of the association. We began to build a very short time after the organization of the association.

When the injunction was sued by Cavaroc et als. against the Governor et als., there was not work enough done to commence slaughtering.

Question. Did you proceed to build as a result of the conversation with me, or by an express agreement between us—Aycock and Attorney General?

Answer. I construed it to be an agreement between us.

Question. Did we ever enter into an express formal agreement that you should build there?

Answer. Never in writing. All that I acted upon was upon the conversation that we had.

You told me that we were taking a great chance in going on there, and that we would eventually lose the suit.

Re-examination.

There was nothing said in reference to the time at which he would disturb us in our possession.

Extract from minutes.—Tuesday, June 28th, 1870.

State of Louisiana, ex rel. S. Belden, Atty. Gen.
vs.
William Fagan et als. } No. 122.

The rule taken by the plaintiffs on the defendants to show cause why they should not be punished for contempt, continued to this day, came on.

Present: S. Belden, W. H. Hunt, for plaintiff in rule; Cotton & Levy and Fellowes & Mills for defendants in rule, except Cavaroc.

When, after hearing pleading, evidence, and counsel, the matter was submitted to and taken under advisement by the court.

Reasons for judgment.

State of Louisiana, ex rel. S. Belden, Atty. Gen.
vs.
William Fagan et als. } No. 122.

In this case the rule upon the defendants, taken by the Attorney General, to show cause why they should not be punished for contempt, has for its object the enforcement of the writ of injunction obtained by the state when the suit was instituted. To understand the issue presented, it is necessary to recur to the history of the litigation; but the facts are so familiar that they need not be repeated here.

The action was brought by the Attorney General to enforce a compliance with act No. 118 of the legislature of 1869, entitled "An act to protect the health of the city of New Orleans; to locate the stock landing and slaughter-houses, and to incorporate 'The Crescent City Live Stock Landing and Slaughter-House Company.'" The defendants were enjoined to that end; the supreme court, on appeal, affirmed the decision of the court below, making the injunction perpetual, and sustained the constitutionality of the act and the authority of the Attorney General to institute the suit as he did.

It seems that pending the appeal the injunction was not obeyed by the defendants. The proceedings now had are with a view of compelling obedience to the writ. The suit was instituted in the fifth district court, but under the provisions of the act creating this court, it was transferred.

In answer to the rule the defendants first sought to show that the Attorney General is estopped from taking these proceedings by reason of an agreement, which he is alleged to have made with defendants, not to enforce the injunction until the final disposition of the cause upon the writ of error taken to the Supreme Court of the United States. It appears there were a large number of suits before several of the district courts of this parish between the company created by the act aforesaid and the various persons who were contesting the validity of the law. At length the several counsel entered into a written agreement to take six certain cases to the supreme court in order to determine the controversy. This case was one of the six selected. It was written in the agreement that all other cases between the parties should be staid until the final decision in these suits by the supreme court of the State of Louisiana, and to abide the result, so far as applicable, of the decision in any or all of the six cases herein named.

The Attorney General did not sign the agreement, but the defendants offered oral proof to show that he concurred in the same and at least tacitly agreed not to enforce this injunction until the

questions could be finally determined by the Supreme Court of the United States; the proof failed; the Attorney General made no such agreement; but in truth, if the language of this agreement is to receive its ordinary meaning, the plaintiffs in error are estopped from prosecuting their writ; this question, however, is not before the court.

The defendants in the rule then further answer that the injunction cannot be enforced because the writ of error to the Supreme Court of the United States prove the final decree of the supreme court of the state, operated as a supersedeas. The writ of error works a supersedeas—suspends the execution of the final decree from which alone the writ is grantable. It does not, however, set aside and annul conservatory orders or writs granted by the court for the protection of the parties pending the suit. So a preliminary injunction obtained by the plaintiff upon motion at the institution of his suit, continues in force, for his protection, until dissolved by a final decree. The rule is similar to our practice in relation to a suspensive appeal. If it was certain valuable shade trees, and "B" threatens to cut them down, "A" may enjoin "B" from committing the depredation. When the court makes the injunction perpetual, and "B" appeals, the injunction is not thereby dissolved nor suspended; and if "B" cuts the trees, he may be punished by attachment for contempt.

So I conclude in this case that the preliminary injunction obtained by the state upon the institution of the suit must remain in full force and virtue, to prevent the violation of the law aforesaid, until it is set aside and quashed by a final decree; that the effect of the writ of error is to supersede execution upon the final decree from which the writ of error was granted, but not to reverse the same and authorize these defendants to dissolve the injunction and to violate the law in question,

It is true that when an appeal has been taken and bond has been filed, the jurisdiction of the appelate court attaches at once, and the inferior court has thereafter no authority to take further proceedings in the cause. Nevertheless, it is within the power and is clearly the duty of the judge below to make such orders and take such steps as may be necessary and proper to retain the object in dispute in the exact position it occupied in relation to the parties when the appeal was granted. So, when an injunction has been granted by the court below and the defendants appeal from a judgment making the same perpetual, it is the duty of the judge who granted the order to punish by attachment for contempt any one who violates the writ pending a suspensive appeal.

The appellate court neither executes nor enforces the orders of the inferior court.

These propositions are fundamental, and would not now be stated had it not been that counsel for defendants indignantly abandoned their case, on hearing of the rule, when the court suggested that such is the law.

The defendants in answer to the rule further set up that the Attorney General cannot enforce this injunction, because the act of the legislature under which he is proceeding is "illegal," unconstitutional, null and void, because it violates the 14th and 15th amendments to the Constitution of the United States and the laws of Congress enacted to carry the said amendments into effect.

It seems strange that counsel who have been attorneys of record in this case since its institution should make such a plea before this court and at this time.

The unconstitutionality of the law in question was the defence made by them when the case was brought. The issue was deliberately presented to the supreme court, and after full argument and careful investigation the validity of this law was affirmed.

Counsel well know that said decision is binding upon this court, and therefore that it is vain to make such a plea.

Another matter of defence set up by counsel for respondents in rule is, that this court is without jurisdiction to proceed further, because on the 21st June they presented a petition to this court asking that this rule be transferred for hearing to the Circuit Court of the United States for the District of Louisiana.

When this petition was brought to the attention of the court it was ordered to be withdrawn from the files and returned to the counsel who presented it, as containing matter improper and insulting to the court. The petition contained the allegation, so often repeated in this controversy, that the statute, for the enforcement of which this suit was brought, violates the fifteenth amendment to the Constitution of the United States and contravenes the provisions of the act of Congress known as the "civil rights bill." Then, with the mistaken supposition that the case would be thereby brought within certain provisions of the law authorizing the transfer of particular cases from the state to the United States courts, the counsel wrote that the defendants believed that their rights could not be enforced, and would be denied them in this court, and that they could not obtain a just and impartial decision upon the questions set up.

Having anticipated the proceedings of counsel, now referred to, the action thereon was taken by the court after mature deliberation and careful consideration of the constitutional provision and of the acts of Congress cited.

It was found that the acts confer no jurisdiction upon the circuit courts over cases of this class, and consequently there was no warrant for demanding the transfer.

It was further urged that these proceedings ought not to go on because Mr. Justice Bradley, while sitting upon the bench of the circuit court of the United States in this city, recently entertained a petition addressed to him by these defendants, and declared

the statute under discussion violative of the fifteenth amendment aforesaid.

It is said that I should not proceed in the face of this declaration, but the circuit courts of the United States have no power to interfere with the proceedings in the courts of the state. Therefore my duty is clearly to follow the decision of the supreme court of the state until it shall have been reversed by the Supreme Court of the United States.

In concluding this matter it may not be improper for me to remark that the litigation, of which this is a branch, has been conducted upon one side in a spirit of bitterness not to be accounted for except on the supposition that the defendants really believe the declarations of their counsel that they will be deprived of the right to labor for a living, instead of merely having that right regulated by a police law in the interest of the health and for the benefit of the community.

In the process of this contest upon the part of the state to maintain the law, there has occurred an unpleasant difference between the state court and the United States circuit court sitting here. Thereupon the cry was raised that the state court was asserting the doctrine of state sovereignty and defying the national authority. It is sufficient to say that the officers of the state take an oath to support the constitution of Louisiana, which declares the complete and perfect subordination of the state to the national government.

The assertion of the judiciary of the state of the constitutional right of the local government to regulate its own police, to the exclusion of the interference of an inferior court of the general government is not antagonistic to the doctrine of national supremacy and state subordination.

With these considerations I must conclude that the defendants have shown no cause why the rule to enforce the preliminary injunction herein should not be made absolute.

But, as it is apparent that defendants were acting under advice of counsel, no punishment for contempt will be inflicted.

The following order will be entered as the judgment on the rule: That the sheriff be, and he is hereby, instructed and required to enforce the preliminary injunction issued herein, and to prevent further violation of the same until the final decision of the Supreme Court of the United States, or the further order of this court.

The clerk will at once furnish the sheriff a copy of the said writ, and of this order, for his guidance. Defendants to pay costs.

H. C. DIBBLE, *Judge.*

Sheriff's proceedings in pursuance of order of court in the matter of

State of Louisiana,
Ex rel. S. Belden, Att'y Gen., } No. 809 of Fifth District Court.
vs. } No. 122 of Eighth District Court.
William Fagan et als.

Received July 27th, 1869, and in compliance with an order of court of date July 2d, 1870, and in order to enforce the preliminary injunction herein issued, the sheriff placed one of his deputies in charge of the premises known as the "Delery Plantation" —specified as a tract of land on the left bank (descending) of the Mississippi river, lying partly in the parish of St. Bernard, and now owned by Charles Cavaroc—to prevent the persons or corporation, herein mentioned, from erecting any docks, ways, wharves, etc., on said premises; from receiving, keeping, yarding, or preserving any beeves, cattle, cows, or any other animals designed for human food in the parishes of Orleans, Jefferson, and St. Bernard; and from slaughtering any such animals in said parishes, except at the building of the Crescent City Live Stock Landing and Slaughter-house Company.

The sheriff still has, at the date of this return, an officer on the "Delery Plantation" to enforce the observance of said writ.

Returned September 21st, 1870.

S. M. BURNETT,
D'y Sheriff Parish of Orleans.

Certificate.

STATE OF LOUISIANA,
Eighth District Court for the Parish of Orleans.

I, Thomas Lynne, Clerk of the Eighth District Court for the Parish of Orleans, and as such duly commissioned and sworn, do hereby certify that the foregoing sixty-eight pages contain a true and correct transcript of all the proceedings had before the eighth district court, testimony, &c., evidence adduced, and all the documents filed in the case, wherein the State of Louisiana is plaintiff and William Fagan et als. are defendants, the same being numbered 122 of the docket of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this twenty-third day of September, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fifth year of the independence of the United States of America.

[SEAL.]

THOMAS LYNNE,
Clerk of the 8th District Court for the Parish of Orleans.

Judge's certificate to the foregoing clerk's certificate.

I, Henry C. Dibble, sole judge of the Eighth District Court for the Parish of Orleans, do hereby certify that Thomas Lynne is clerk of the said court, and that the signature "Thomas Lynne" to the foregoing certificate is in the proper handwriting of him, the said clerk. To his official acts, as such, full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

Given under my hand at the city of New Orleans, on this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and seventy.

HENRY C. DIBBLE, *Judge.*

Clerk's certificate to the foregoing judge's certificate.

I, Thomas Lynne, Clerk of the Eighth District Court for the Parish of Orleans, duly commissioned and sworn as such, do hereby certify that the Honorable Henry C. Dibble, whose name is signed to the foregoing certificate, is the sole judge of this court, and that he is duly commissioned and qualified as such, and I do further certify that said court is a court of record.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on the twenty-fourth day of September, in the year of our Lord, one thousand eight hundred and seventy, and the ninety-fifth year of the independence of the United States of America.

[SEAL.] THOMAS LYNNE,
Clerk.

[Filed 17 October, 1870.]

In the Supreme Court of U. S.

No. 479.

WM. FAGAN, *et al.*

vs.

STATE OF LOUISIANA, BY THE ATTORNEY GENERAL.

No. 475.

IMBAN, AYCOCK & CO.,

vs.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY.

No. 476.

THE BUTCHERS' BENEVOLENT ASSOCIATION,

vs.

THE SAME DEFENDANT.

No. 477.

LIVE STOCK DEALERS AND BUTCHERS' ASSOCIATION,

vs.

THE SAME DEFENDANT.

No. 480.

THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS,

vs.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY.

PLAINTIFFS' BRIEF.

J. A. CAMPBELL,
For Plaintiffs.

Baltimore Publishing Co., 169 Baltimore street, Baltimore

Supreme Court of the United States.

No. 479.

Docket, Supreme Court, U. S.

WM. FAGAN, *et al.*

vs.

STATE OF LOUISIANA.

BY THE ATTORNEY GENERAL.

THE STATEMENT OF THE CASE FOR THE MOTION.

The defendant, by the Attorney General, filed an information in the Fifth District Court of New Orleans, in 1869, to injoin the plaintiffs from violating an Act of the Legislature, of 8th of March, 1869, being No. 118.

The Act created the Crescent City Live Stock Landing and Slaughter House Company, and endowed that Company with the sole and exclusive power for twenty-five years to conduct and to carry on the business expressed by its name, in the City of New Orleans and the Parishes of Orleans, Jefferson and Saint Bernard. These plaintiffs were injoined from landing, keeping, preserving animals for slaughter in those parishes, from having, keeping or establishing wharves, docks, landings, houses, pens, etc., etc., for the purpose; and injoins them from leasing or buying and Cavaroc from selling or leasing land for the purpose; and injoins them from slaughter-

ing animals anywhere in those parishes except at the houses of this Company. The plaintiffs are a corporation of butchers, to carry on the business of purchasing, preserving and keeping and slaughtering animals for food, and for having suitable arrangements for the purpose. The final judgment in the Fifth District Court, is to be found at p. 24, record, and the affirmance at p. 30. An injunction was issued *ex parte* and was perpetuated by the Court in the final judgment. The plaintiffs are butchers engaged in the business of preparing food for market.

A *suspensive* appeal was taken from the decree to the Supreme Court of Louisiana.

Objection was made in the answer, that the Act violated the Constitution of the United States and the judgment of the Court was made in which the Constitution of the United States was considered and the Act of the Legislature was sustained. Record p. 34, folio 90–91.

The final judgment was made 9th May, 1870, application was made to Justice Bradley, of the Supreme Court, U. S., for a writ of error and it was obtained 13th May and *filed* 16*th May*, 1870. The bond is for $100,000 and approved and *filed* 16*th May*, 1870, in the Supreme Court of Louisiana. The facts that occurred after this, are set forth in the motion. The case was originally in the Fifth Court. After this writ of error was perfected as aforesaid, the defendant moved the Fifth Court in June, 1870, to transfer the case from the Fifth to the Eighth District Court, that Court having power to issue injunctions. This was *ex parte*. Then an application was made to the Eighth District Court to enforce the final judgment of the Supreme Court of Louisiana, perpetuating the injunction originally rendered by the Fifth Court, this motion was refused, because of the writ of error of the Supreme Court of U. S., and the *supercedeas*. A motion was then made to enforce the *ex parte* injunction of the Fifth Court as granted in the first instance, and this was granted and the property described in the suit has been seized and is held

and the trade of the plaintiffs has been destroyed. Besides this the Crescent City Live Stock Landing and Slaughter House Company, about the same time filed a petition against the City of New Orleans and the Metropolitan Board of Police of that city, in the same Eighth District Court, setting forth the Act of the Legislature, No. 118, and the privileges of the corporation declared therein, and asking of the Court to require and to injoin those corporate bodies to hinder and prevent all persons whomsoever from doing any of the acts which it was supposed had been prohibited by the Act, No. 118,

The petition does not describe any person or persons by name who were to be prevented and hindered, only evil disposed persons are referred to, as the objects of the pursuit that was thus ordered.

The order was made as asked for, and the police, a body of several hundred, have been turned loose as the special guardians or guards of this corporation.

What they have done to the plaintiffs will appear from the affidavits filed in this and the cases that follow:

I.

The 25th section of the Judiciary Act of 1789, authorizes the issue of the writ of error in this cause and the 23d section prescribes that the writ shall be a *supercedeas* if allowed within ten days of the judgment, and be served on the defendant and a bond be given and filed in the same time.

The effect of the writ thus accompanied is described in the decisions of this Court.

Rubber Co. vs. Goodyear, 6 W., 153.

R. R. Co. vs. Harris, 7 W., 574.

II.

A writ of error which is a *supercedeas*, removes the cause from the Court to which it is addressed and prevents the inferior

Court from doing any act to carry that judgment into effect. It suspends its power and jurisdiction over the cause and whatever is done in the cause subsequently, until its disposition in the Supreme Court is done under the order or allowance of that Court. The writ commands the record and proceedings to be sent to the Supreme Court and the Act of Congress declares that this writ shall be a *supercedeas*.

Cases above cited.
Bacon Ab. Supercedeas a.
Stockton vs. Bishop, 2 How., 74.
Hogan vs. Ross, 11 H., 294.
Hardeman vs. Anderson, 4 H., 284.

The writ at common law was a *supercedeas* by implication, (Cro. Jac., 534,) but was regulated afterward by statutes, the principal of which (3 James, ch. 8) suggested the Act of Congress of 1789.

In the present cause the final order was made in the Supreme Court of Louisiana, the 9th May, 1870. The writ of error was allowed, served and the bond approved and filed before and on the 16th May, 1870. No execution had been issued. These acts made the writ operative and entitle us to claim the *supercedeas*. The cause was transferred from the Supreme Court of Louisiana to the Supreme Court of the United States.

1 Har. & J., 475.
Cases above cited.
Bryan vs. Bates, 12 Allen Mass. R., 202.
5 Taunton, 204.
1 Chitty R., 241.
2 Tidd's Pr., 1145, 1146.
4 Conn. R., 365. 4 S & M 670

A *certiorari* would have operated in the same manner.

43 Penn. R., 377.
13 Wend. R., 664.

III.

The judgment of the Supreme Court of Louisiana affirmed a judgment of the Fifth District Court of New Orleans, in which an *ex parte* injunction was perpetuated and adjudged that the defendants (plaintiffs in this Court) be enjoined from leasing or using the land, known as Delery plantation, belonging to Chas. Cavaroc, for the purpose of landing, receiving, stabling, yarding, keeping animals, destined for sale or slaughter in the parishes named; and as a corporation and individuals, they be injoined and restrained from erecting docks, ways, wharves, landings, stables and other enclosures, for the purpose before mentioned; and likewise that they should not slaughter any animals intended for food elsewhere than at the houses of the Crescent City Live Stock Landing and Slaughter House Company, in those parishes, and that Cavaroc be enjoined from selling his property for such purposes. (Record p. 24.) It was the affirmance of this judgment that was complained of for error manifest. And this was the judgment that is certified to this Court in the proceedings. It is this judgment as to which there is a *supercedeas*. The Eighth District Court acknowledged that this judgment was superceded and could not be enforced, and declined the motion of Mr. Att'y General Belden to make it executory.

IV.

The other proceedings in that Eighth District Court make this motion necessary. It appears that the cause was removed to the Supreme Court from the Fifth District Court in December, 1869, by a suspensive appeal; was argued in January, 1870, in the Supreme Court, and the final order made 9th May, 1870.

The Eighth District Court was created and organized in March, 1870, with exclusive jurisdiction to issue injunctions, *writs of*

mandamus, and to try causes relative to offices under a special law. After the issue and service of the writ of error from the Supreme Court, a motion was made in the Fifth Court and allowed to transfer the cause from the Fifth to the Eighth District Court. Then the motion was made to the Eighth Court to execute the judgment of the Supreme Court of the State above described, and this was refused, and then a motion was made to attach the plaintiffs in this Court for a contempt of the Court for a violation of the preliminary injunction. No punishment was inflicted, but in lieu of such a judgment, the Court made an order, the precise import of which is, to enforce the judgment of the Supreme Court aforesaid. We charge upon this order, that it was a plain and manifest disobedience of the writ that had been issued from the Supreme Court of the United States, and an obvious evasion of its object and purpose.

V.

The cause in the Fifth District Court, before the Eighth Court had been created, was determined, and was removed from that Court by a *suspensive appeal* to the Supreme Court of the State. The effect of the *suspensive appeal* is to divest the inferior Court of jurisdiction of the cause.

The fact that the appeal is suspensive being ascertained, (Record 26,) all other questions are to be settled in the Supreme Court.

Code Pr., 564, 565, 575, 580.

State of La. vs. Walden Judge, &c., 19 Louis'a, 168, 178 and the cases cited.

State of Louisiana vs. Judge, 20 Ann., 529, 530.

State of Louisiana vs. Judge, 21 Ann., 43, 113, 152.

1 Bioche dic de pro. tit. appel., No. 470, 471–4.

Talandier a l'appel., 347.

VI.

The injunction granted in the Fifth District Court upon the petition, *ex parte*, was operative till the judgment rendered in the cause in that Court. The judgment in that Court converted it from a temporary into a perpetual injunction, and the allowance of that perpetual injunction was the judgment appealed from.

By the suspensive appeal, its operation was suspended until the judgment in the Supreme Court of the State. That judgment affirmed the judgment of the Fifth Court. But before the execution of that judgment, the confirmatory judgment was itself suspended by the writ of error from the Supreme Court—all of this is admitted, save, that the Eighth Court decides that this preliminary injunction has been left flying in the Fifth Court, pending all of these proceedings, and that it may be transferred to the Eighth Court and enforced.

If there had been no writ of error to the Supreme Court of the United States, the judgment of the Supreme Court of the State might have been carried to the Fifth Court and spread on its record, and by motion in open Court, would have been made executory. But until all this had been done, the Fifth Court could not have issued the final writ of execution—a perpetual injunction—for the writ of injunction is, at one stage of proceedings, an administrative writ, and another a judicial writ—final process. This will appear from Railroad Co., vs. Bradley, 7 Wall., 575. Louisiana cases above cited.

And for the practice in regard to making judgments executory. Ingraham vs. Dawson, 18 How., 486. 20

VII.

The Courts of the United States, under the Acts of Congress, have adequate power to protect its jurisdiction from interfering Courts and parties, and to protect suitors before it from oppres-

sion. The final order of the Eighth Court, on the motion to attach for a contempt, is a final execution, and the Sheriff has seized and holds property under it. Any Court of Record at common law will protect its jurisdiction by the issue of writs of *supercedeas* in a matter properly cognizable there. In the case of Carryl vs. Taylor, 20 How., the cases are collected in which such power is exerted. The Supreme Court of the United States have employed the same power in a number of cases, and announced principles in others which justify the application in this case. The 25th section of the Judiciary Act places the State Courts in subordination to the Supreme Court within the range of the cases described in it. The Court may compel obedience to the writ of error. 18 How., S. C. R., 476.

It may render and enforce the final judgment in the cause arising under that section. The case before the Court is one of an aggravated character. All that was required of the plaintiffs they have done to bring their cause hither. The writ had hardly been served when measures were taken to defeat and to destroy it.

Bac. Ab. tit. Sup. B.
1 Strange, 419, 3. D. & E., 643.
Tidd's Pr., 1145–6–7. 4 John ch R 609
Morris Cotton, 8 Wall., 507.
Ex parte Milwaukee Co., 5 Wall., 188.
R. R. Co. vs. Bradley, 7 Wall., 575.
Stockton vs. Bishop, 2 H, 74. 6 Hart J 202
Hardeman vs. Anderson, 4 Howard, 284.
5 B. and Ald., 903.
Bryan vs. Bates, 12 Allen, Mass. Rep., 202.
Taswell vs. Stone, 4 Burrow, 2454.
8 East., 416. 2 wheat. 1

VIII.

The Act of the Legislature, No. 118, creating the Crescent City Live Stock Landing and Slaughter House Company, en-

dowed that Company with faculties to defend itself. It endowed the Company with a capacity to sue for a fine of $250 for every violation of the privileges granted to them, and at the date of the suit brought by the Attorney General, it had exerted a capacity for suing equal to that of Sir Giles Mompesson, the monopolist. The Attorney General came in after suits, numbered by hundreds, had been made by the Company. This suit is, of Attorney General B, asking of the Court C, to relieve the Crescent City Stock Landing and Slaughter Company D, from the opposition of the various persons and corporations whowere ejected from business occupations, pursuits and hopes which are embodied in the symbol E. So, when Mr. Justice Bradley had granted the writs of error, taken the bonds, signed the citations, and these had been filed, the Crescent City Live Stock Landing and Slaughter House Company filed a petition against the city of New Orleans (corporate name) and Metropolitan Board of Police, which recited the act, the privileges granted to the Company as a monopoly, and that a great number of *evil disposed persons* had violated this monopoly by doing the prohibited acts, and asked that these municipal bodies be enjoined to use their powers to protect this corporation in the quiet enjoyment of their great monopoly and to preclude all persons from conducting the trade, and from hiring the property which they claimed an exclusive title to carry on, and the exclusive right to possess and use. So liberal was the prohibitory order of the Court that the corporation afterwards released a portion of it as excessive. No person is named in the petition or the writ of the Court as an infringing party. No property is described on which these municipal bodies were to act. No accusation is made of any misfeasance or non-feasance on the part of those bodies.

The Court proceeds on the unwarrantable assumption that those bodies are to carry the orders of the Court into effect as ministerial officers. They are commanded to hinder and prevent evil disposed persons, from doing acts and holding property.

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The Court proceeds on the unwarrantable assumption that those bodies are to carry the orders of the Court into effect as ministerial officers. They are commanded to hinder and prevent evil disposed persons, from doing acts and holding property.

The police force is composed of several hundred persons. These are thus called into activity on the *ex parte* order, at the instance of this corporation. There is no precedent for such a proceeding. The case stands alone.

The nearest instance we can find to it, is that which is prominent in American history, as that of the application for writs of assistance in Massachusetts, described by Bancroft. 4 Ban. hist. U. S., 415.

The writ issued is continuous, roving, requiring the exercise of judicial power, allowing unreasonable searches and seizures, and violating the constitutional rights of the citizen. The Attorney General, not content with the proceeding we have been describing, made the State a party plaintiff, in this proceeding also, and is jointly prosecuting it with the Crescent City Live Stock Landing and Slaughter House Company. The two proceedings are contemporaneous. We have brought these acts to the notice of the Court in this cause, that the Court may discover the extent of the combination between the two parties, and the disposition of both, as now represented, to avoid the writ of error and Act of Congress, and the facilities for doing so.

IX.

The Act of Congress of 1789, in relation to the revisory powers of the Supreme Court over State Court, referred alone to the process and mode of proceedings at common law, and adopted them—writs of error and their effect. The *supercedeas*, whether by implication or writ, was familiar, and the method of revision by writ of error was adopted in toto. In reference to State judications, it has not been changed. The Act of 1803 adopts the appeal in equity and admiralty cases, but under the same regulations and restrictions. Upon this discussion, some light may be thrown by considering the question before us with reference to the chancery law. The effect of an appeal will be found in

the Louisiana decisions and the French works on practice we have cited.

The appeal transfers the record—divests jurisdiction of the subordinate Court, invests the Superior Court with full jurisdiction, and the Appellate Court generally decides *de novo*. The admiralty appeal is the purest form in which this writ is used. So it was in chancery. In Great Britain, this was found inconvenient from the slowness of the proceedings.

Notwithstanding an appeal, the subordinate Court may go on with the cause. This was settled by rule of the House of Lords in 1807. The rule is to be found, Huguenin vs. Beasly, 15 Vesey, 182.

The appellant might then apply to the House of Lords for stay of proceedings after appeal.

McNachten vs. Boehm, 1 J. & W., 48.

Gwyn vs. Lithbridge, 14 Vesey, 585.

The history is told, (3 Paige, Ch. R., 381,) and the New York alteration of the English rule stated, (1 John Ch. R., 80, 81,) and the present English practice is stated.

Barus vs. Fewkes, 1 Law Rep., (Eq.,) 395.

Gibbes vs. Daniel, 4 Gifford R., 1, 41.

The change in the English rule was adopted after 1789, and the Judiciary Act of 1789 was the rule of the English Courts at that date, both at law and chancery. The writ of error with bond, and the appeal with or without bond, removed the suit to the Appellate Court entirely and absolutely.

The American statute provided against vexatious delays by prescribing that no appeal or writ of error should issue except from a *final judgment*.

21 Black 221

X.

The enquiry finally comes, will the Court protect the plaintiffs from the efforts of the two combining parties, the Attorney General and the Company?

The Court must perceive that the proceedings in the Eighth District Court were intended to prevent the operation of the writ of error and *supercedeas*.

The examination of the constitutional question in this Court was a consummation to be avoided. Hence the destructive machinery employed. If persons, whose daily bread depends upon their daily labor, be compelled to close their work, the result is starvation or submission. Such has been the calculation in this cause.

We submit to the Court, with this brief, a statement of the Act, and the argument of the plaintiffs against its validity.

J. A. CAMPBELL,
for Plaintiffs.

Supreme Court of the United States.

No. 475.

S. C. Docket.

IMBAN, AYCOCK & CO.

vs.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY.

No. 476.

THE BUTCHERS' BENEVOLENT ASSOCIATION

vs.

SAME DEFENDANT.

No. 477.

LIVE STOCK DEALERS AND BUTCHERS' ASSOCIATION

vs.

THE SAME DEFENDANT.

These suits were commenced in 1869, by the respective plaintiffs, who had been engaged for many years in the importation into New Orleans of animals suitable for supplying the markets

of that city and the neighboring parishes of Orleans, Jefferson, and St. Bernard, with meat for food. A large number of persons and a large capital were employed by them as stated in their petitions, and admitted by the defendants on the trial.

The defendants were incorporated by Act of Legislature, passed 8th March, 1869, and all of the business done by these plaintiffs was prohibited to them and engrossed by the defendants under that Act. A monopoly was created in favor of seventeen parties. The plaintiffs respectively filed petitions for injunctions against the suits and disturbances of the defendants, which were granted in the 6th and 7th District Courts of the parish of Orleans, and in December, 1869, the judgments of those Courts were in favor of the plaintiffs, and the defendants perpetually enjoined from maintaining any suits, or depriving the plaintiffs of any of the rights, privileges, or immunities disturbed by the Act under which the defendants claim. They pronounced the Act to be inoperative. Appeals were taken and the judgments in the District Courts were reversed in the Supreme Court and the petition dismissed.

The final order in these cases in the Supreme Court of the State bears date 9th May, 1870. Application was made to Mr. Justice Bradley, for a writ of error from the Supreme Court of the United States, and the allowance, service of the writ, and filing of the bond, took place in ten days from the date before mentioned, so that the writ was a *supercedeas* to the judgment in the Supreme Court. No proceeding on these judgments in the District Courts has taken place.

But early in June, 1870, shortly after the perfection of the removal of the causes by writ of error to the Supreme Court of the United States, the defendants commenced a proceeding in the 8th District Court by a petition for what is termed a writ of injunction, directed to the City of New Orleans and the Board of Metropolitan Police of New Orleans, by which they are commanded to enforce the right of the plaintiffs to all of the privileges specially granted to them in the Act, No. 118. The operation

and effect of this writ upon the plaintiffs in the suits above-named are set forth in the affidavits filed. The object of this proceeding was to enforce the judgment of the Supreme Court notwithstanding the service of the writ of error in this cause and to secure the fruits of a final judgment pending the appeal.

These cases show that the plaintiffs prior to the Act of 1869, were pursuing their employment in these parishes. That they were in possession of the state and condition of butchers and live stock dealers, and had invested their capital and were applying their skill therein. This corporation (defendants) has disturbed them in that right and employment under color of a law which they impugn as a violation of the Constitution of the United States. Until that right be determined by the Supreme Court, the plaintiffs are entitled to enjoy the condition in which they were. The defendants cannot by the proceeding in the Eighth Court deprive the plaintiffs of the protection they had became entitled to.

J. A. CAMPBELL,
For Plaintiffs.

Supreme Court of the United States.

No. 480

THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS.

vs.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY.

This is the first of the series of suits brought under Act No. 118, by the corporation created in the Act for the enforcement of the exclusive privileges granted therein, to land, keep and slaughter all animals designed for human food in New Orleans or the parishes of Jefferson, Orleans and St. Bernard, and to have, maintain, and establish landings, wharves, pens, yards and slaughter houses for that purpose, and to enforce the prohibitory clauses against all other persons by injunction.

This petition was filed in May, 1869, before the Act became operative under the twelfth section.

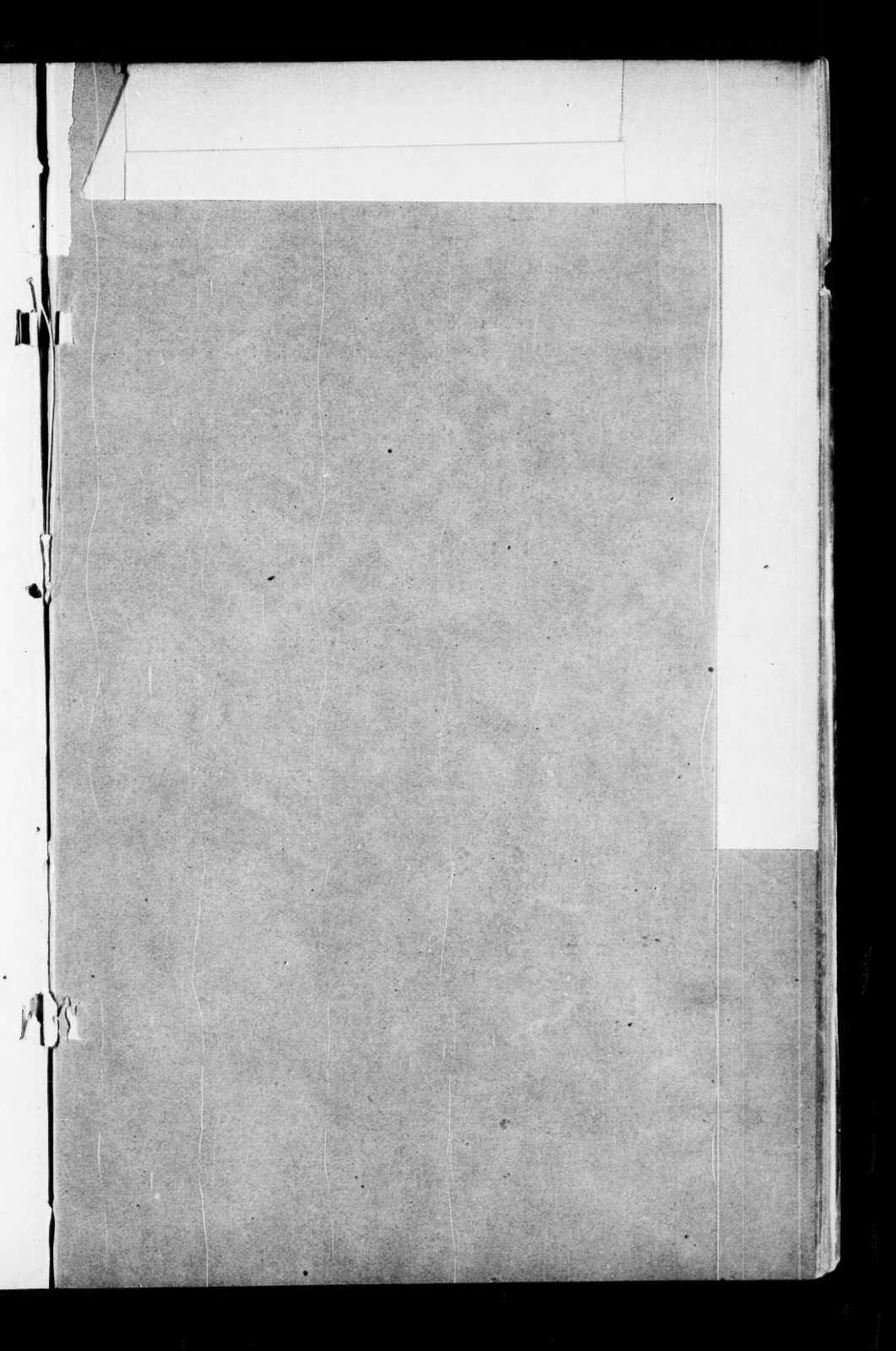
The defendants were then in possession of the occupation and business which the Legislature attempted to transfer to the defendants, and prosecuted it conformably to the lawful police regulations.

The injunction was granted and perpetuated in the Fifth District Court and in the Supreme Court of the State, and the defendants were enjoined from doing any of the acts that violated the charter of the Company. This judgment of the Supreme

Court of the State was rendered in 1870, and the final order in the case rendered the 9th May, 1870—writs of error issued as in the other cases, and the case is now pending in the Supreme Court of the United States.

No execution has been taken on this judgment, nor any proceeding under it. The suit in the Eighth District Court is the mode by which execution has been sought and obtained. The affidavits and the record are filed to show the operations of the Eighth Court. We contend that these acts violate the Act of Congress under which the writ of error and its operation was declared.

J. A. CAMPBELL,
Plaintiff's Attorney.



Durant —
Attorneys for the Defendants
have to the 5th Dec. Court
for injunction = Time of
injunction granted —
appeal to Supreme Court
Bonds $2000 each —
Complaint eighth
amended Defendants Demurrer
Bond
Motion for Preliminary Injunction
$1000.00
Motion for Permanent injunction —

Supreme Court of the United States.

PAUL ESTEBEN, &c., WILLIAM FAGAN, et al.,

vs.

THE STATE OF LOUISIANA.

POINTS

OF COUNSEL OF DEFENDANTS IN ERROR FOR A SUPERSEDEAS AND INJUNCTION.

GIBSON BROTHERS, PRINTERS.

24 4/15-16 Dorsey

Durant —

Attorney for attachment
plaintiff in the 5th District court
for injunction = Suit of
injunction - granted —
appeal to Supreme court
Bonds $5000 each —
Injunction dissolved
on appeal bonds discharged —
Verdict —
Wood Piers granted by
Jury Judgment — Bond
$10000
Jury & Dist Court granted
injunction —

Supreme Court of the United States.

PAUL ESTEBEN, &c., WILLIAM FAGAN, et al.,

vs.

THE STATE OF LOUISIANA.

POINTS

OF COUNSEL OF DEFENDANTS IN ERROR FOR A SUPERSEDEAS AND INJUNCTION.

GIBSON BROTHERS, PRINTERS.

Supreme Court of the United States.

PAUL ESTEBEN, &c., WILLIAM FAGAN, *et al.*, *vs.* THE STATE OF LOUISIANA. } No. 479.

POINTS

Of Counsel of Defendants in Error on the Motion of Counsel of Plaintiff in Error for a Supersedeas and Injunction.

The Legislature of Louisiana, in order to carry out its undoubted power to protect the health, promote the cleanliness, and regulate the police of the city of New Orleans, passed an act in 1869 (see acts of that year, p. 170) ordering all animals imported for use or consumption into the city to be landed at one place, and all intended for food to be slaughtered there, and for the purpose of aiding this design of improving the health and cleanliness of the city, the Legislature in the same act incorporated the Cresent City Live Stock Landing and Slaughter House Company.

The plaintiffs in error, in defiance of this law, undertook to establish a rival stock landing and slaughter-house, and to receive and slaughter animals there in defiance of the law. To vindicate the will of the Legislature, the attorney general of Louisiana applied for an injunction against the plaintiffs in error, and on his petition obtained a preliminary injunction, which the plaintiffs in error attempted unsuccessfully to set aside. After hearing on the merits, the fifth district court of New Orleans made the injunction perpetual. An appeal was taken to the

supreme court of Louisiana, where the judgment of the fifth district court was affirmed, and from which the losing party has prosecuted this writ of error.

In the meantime the Legislature had passed the act of March 10, 1870, creating an additional court, the eighth district, in New Orleans, giving it exclusive jurisdiction of injunction causes, and ordering injunction causes in other courts to be transferred to it.

After the writ of error had been sued out to the judgment of the supreme court of Louisiana, the plaintiffs in error were advised that they were set free from the injunction first issued against them in the fifth district court, and were proceeding to act in defiance of the statute and to do all the things which the injunction was intended to restrain them from, when the attorney general of Louisiana, the cause, in accordance with law, having been transferred from the fifth to the eighth district court, obtained a rule upon them requiring them to show cause why the injunction should not be enforced against them. The attorney general of Louisiana also joined with the company in a suit in the eighth district court to compel the Board of Metropolitan Police to do their duty and prevent the violation of the health laws of the State. On these proceedings the eighth district court gave judgment, which judgment, so far as appears or is known, the plaintiffs in error have not sought to appeal from, but now ask this court to prohibit the local officers in Louisiana from obeying it.

Hereupon we submit—

First. The general doctrine applicable to writs of error at common law is stated in Tidd's Practice, late editions, quite fully. But writs of error to reverse judgments at law rest on a different basis from writs of error brought for the purpose of obtaining a revision of a case by the Supreme Court of the United States. Supersedeas is a law term, and has no application to a chancery proceeding.

Second. In the English chancery practice the question whether an appeal shall stay proceedings rests very much in the discretion of the tribunal from which the appeal is taken; and it is common to make special application to that tribunal, either to stay further proceedings or to pass an order that proceedings shall not be stayed. (2 Smith's Chan. Pr., 68.) Such was the course in the recent English case, *Barrs* v. *Fewkes*, 1 Law Rep., (Eq.,) 392. The application was made to the court appealed from. (See, also, *Harrington* v. *Harrington*, 1 Law Rep., 3 Chan., 564.) The general rule is, that an appeal will not stay proceedings. (See General Order in House of Lords in 1807, copied in 15 Ves., 184; *Gwynn* v. *Lethbridge*, 14 Ves., 585; *Willan* v. *Willan*, 16 Ves., 216; 9 Ves., 316; *Waldo* v. *Caley*, 16 Ves., 209; 4 Ves., 316; 2 Ves., 563; *Hart* v. *Mayor, &c., of Albany*, 3 Paige Ch., 381, where there is some account of the English practice.) Also, in 2 Daniell's Chan. Pr., under head of "Rehearings and Appeals," there is a general statement of the doctrine. See, also, *Walburn* v. *Ingalty;* 1 Mylne & Keene, 61; 6 Eng. Chan. Cases, p. 498.

Third. Under the practice by which causes are removed from State courts to the United States Supreme Court, on writs of error, the removal is in the nature of an appeal. It is a continuation of the same litigation, and not a new suit, as a writ of error at common law. The mode of removal is only a matter of form. The substance of the matter is, that the cause is brought before a supervising tribunal for revision; and the jurisdiction of the United States court is in its nature appellate. This doctrine has been constantly stated.

Martin v. *Hunter*, 1 Wheat., 349, 350.
Cohens v. *Virginia*, 6 Wheat., 410.
Nations v. *Johnson*, 24 How., 204, 205.
Bryan v. *Bates*, 12 Allen, 213.

The writ of error, therefore, only inaugurates a new stage in the same cause; and accordingly an injunction should, of course, continue in force until the determination upon the writ of error, which is the ultimate determination of the original suit.

Fourth. The doctrine we contend for will be found in the following cases:

Hart v. *Mayor, &c., of Albany*, 3 Paige, 381.
Graves v. *Maguire*, 6 Paige, 381.
Stone v. *Carlan*, 2 Sandf. Sup. Ct., 738.
Merced Mining Co. v. *Fremont*, 7 Calif., 131.
Spring v. *South Carolina Ins. Co.*, 6 Wheat., 519.
Thompson v. *McKim*, 6 Har. and J., 302, 331–334.
Williamson v. *Carnan*, 1 Gill. and J., 184, 202, 203, 209, 210.
Boren v. *Chisholm*, 3 Ala., 513.
Garrow v. *Carpenter*, 4 Stew. & Port., 336.
Coleman v. *Albany Bridge*, 5 Blatchf., 58.

In *Graves* v. *Maguire*, it was held that an appeal from an order granting an injunction does not dissolve the order so as to authorize the party to proceed in violation of the order, pending the appeal.

In *Stone* v. *Carlan*, it was held that an appeal from an order granting an injunction does not stay the operation of an injunction, and if the defendant violates it pending the appeal, an attachment will issue against him.

In *Merced Mining Co.* v. *Fremont*, an injunction was granted, the precise nature of which is not stated, and the defendant appealed, and continued to do the acts enjoined; and it was held that the appeal did not supersede the injunction.

In *Spring* v. *South Carolina Ins. Co.*, it was held that

in an equity cause, the *res* in litigation may be sold by order of the circuit court, and the proceeds invested in stocks, notwithstanding the pendency of an appeal to this court.

In *Thompson* v. *McKim*, it was held that an appeal from the court of chancery in Maryland does not *per se* suspend proceedings in the decree appealed from.

In *Williamson* v. *Carnan*, it was decided that a court of chancery will restrain a party from doing an act injurious to an individual, or which may be prejudicial as a public nuisance, pending any judicial proceedings before those tribunals, by which authority to do the act, or its lawfulness, is to be determined.

In *Boren* v. *Chisholm*, there was an injunction against enforcing a judgment; but the chancellor afterwards passed a decree dismissing the bill upon which the injunction was obtained. Then the plaintiff filed a writ of error, to reverse that decree. *Held*, that this did not have the effect to reinstate the injunction.

So, *e converso*, where an injunction to stay proceedings at law is dissolved, an appeal from the decree dissolving the injunction does not revive the injunction, so as to operate as a stay of the proceedings at law.

Hoyt v. *Gelston*, 13 Johns., 139, 141.
Wood v. *Dwight*, 7 Johns. Ch., 295.
Hart v. *Mayor, &c., of Albany*, 3 Paige, 381.

There appear to be no cases holding the contrary doctrine. If any cases are found which, at first, seem to do so, it will probably appear on examination that there was

no preliminary injunction; that the only decree was the final decree, which was appealed from.

Such were—*Messonier* v. *Kauman*, 3 Johns. Ch., 66.
Barrow v. *Rhinelander*, 3 *Ib.*, 123.
Riggs v. *Murray*, 3 *Ib.*, 160.

Fifth. It is impossible to suppose that there should not be authority in a court of equity, by a decree, to hold matters in a certain fixed position until the ultimate determination of the cause. This is apparent by considering the nature of the relief which may be granted by means of an injunction, in many cases, where, if the injunction is suspended while the appeal or writ of error is pending, all the mischief will be done which is sought to be prevented.

For instance:

If an injunction to stay waste by cutting down trees is suspended, the trees will be cut.

If an injunction to restrain a nuisance affecting health, to abate and suppress a source of disease, is suspended, disease and death will prevail.

If an injunction to restrain the marriage of a ward in chancery is suspended, an irretrievable mischief may occur at once. (2 Seton's Forms of Decrees, 3d Lon. Ed., 727, 728, for a form of such a decree.)

If an injunction to restrain the publication of private letters, or any libelous matter, or to restrain the disclosure of secrets, the knowledge of which was gained in the course of a confidential employment, (see *Evitt* v. *Price*, 1 Sim., 483,) or the drawing of a lottery, or anything else, the doing of which consists of a single act, or a short series of acts, is suspended, then the whole equitable remedy is in vain; nothing will remain but the poor privilege of punishing the party afterwards, so far as he may be punished when a decree has been violated.

Sixth. So in cases at law, suppose articles have been seized on a search warrant—stolen goods, obscene books or pictures, lottery tickets or gambling materials, counterfeit coin, forged back notes, implements for counterfeiting, or any other article deemed dangerous or noxious, which State laws may authorize to be seized and held for condemnation and forfeiture; and a restoration to the owner, (in case of stolen goods,) or a condemnation and forfeiture and destruction of them, have been decreed. If a writ of error is sued out, that supersedes the final order of restoration to the owner, or condemnation; but shall the articles therefore be given up to the person who had the guilty possession of them, or shall they still be held in the custody of the law?

Seventh. It must be the case that there is power in a court of equity, and also, when necessary, in a court of law, to pass orders which shall have the effect to hold things as they are, and prevent any subsequent change in the situation of things which shall be diastrous to the plaintiff, or to the public, and fatal to the relief which is sought.

The law of Louisiana is very explicit in this regard. See La. C. P., art. 307.

Delacroix vs. *Villere*, 11 Louisiana Ann., pp. 39 to 41.
White vs. *Casanare*, 14 do. 57.
Knabe vs. *Fernot*, 14 do. 847.

Eighth. What power, then, has the Supreme Court of the United States in the premises?

Take the illustration put by the counsel for the plaintiff in error. A prisoner under sentence of death sues out a writ of error. The counsel says, "Shall he be hung while his writ of error is pending?"

It is not necessary to say yes, because it may well be

that this court has power to issue a writ, for the purpose of holding things as they are; of preventing execution of the final judgment. But does it follow that the prisoner shall go at large?

The most that can be done is to take such measures as may be necessary to preserve the condition of things which existed just prior to the passing of the final decree in the court below. It is perfectly plain, in the case supposed, that this court cannot order the discharge of the prisoner while the writ of error is pending.

"Why not? Is he not held on final sentence?"

The answer is, that the *supersedeas* attaches to so much of the final sentence as determines the ultimate rights of the party.

In *Bryan v. Bates*, 12 Allen, 213, a case in Massachusetts, much considered and well reasoned out, one who had been convicted of a misdemeanor, and sentenced to imprisonment thereon, and committed to jail in pursuance of that sentence, sued out a writ of error in the United States court, and then applied for his discharge on *habeas corpus*, on the ground that the writ of error was a *supersedeas*. The court decided that, although the writ of error was a *supersedeas*, yet they had authority to hold him until he should give bail.

See also *Nauer* v. *Thomas*, 13 Allen, 574; *Fleming* v. *Clark*, 12 Allen, 191, in the latter of which cases the same question was argued but not decided.

Ninth. It is constantly held that only *final* judgments and decrees can be re-examined and reversed on writs of error. The cases are numerous where this court has refused to entertain any application to deal with preliminary decrees.

A striking case, in some respects analogous to the

present, was that of *Gibbons* v. *Ogden*, 6 Wheat, 448. There a bill was filed in the State court to restrain the defendant from navigating steamboats upon certain waters, upon which the Legislature had granted to Livingston and Fulton the exclusive right to navigate steamboats. On filing the bill, a preliminary injunction was granted. The defendant set up a right under laws of the United States, and moved to dissolve the injunction. This motive was denied. An appeal was taken to the highest court of the State, and that court also refused to dissolve the injunction. The defendant then appealed to the Supreme Court of the United States, on the ground that a question under United States laws was involved; but as no *final* decree had been made in the State court the appeal was dismissed for want of jurisdiction.

So the preliminary injunction stood, and was not interfered with.

See, also, *Verden* v. *Coleman*, 18 How., 86.

Boyle v. *Zacharie*, 6. Pet., 656, and Seq., and numerous other cases.

Tenth. The United States Statute of 1789, §23, recognizes that preliminary injunctions shall stand. The statute provides that a writ of error shall be "a *supersedeas* and stay of execution, in case," &c. Executions are not to issue; that is, precepts to enforce the final judgment of the State courts are not to issue.

It is only the final and ultimate rights, and not the incidental rights, of parties that writs of error are designed to vindicate.

All of which is respectfully submitted.

J. S. BLACK,
MATT. H. CARPENTER,
CHARLES ALLEN,
THOS. J. DURANT,
Of Counsel.

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Sep act p 170

THE GREAT MONOPOLY!

ATTEMPT TO DEPRIVE THE PEOPLE OF THEIR RIGHTS.

A GREAT INDUSTRY ASSAILED.

A HEALTHY ACT OF LEGISLATION.

CHARTER OF THE SLAUGHTERHOUSE COMPANY.

An act to Protect the Health of the city of New Orleans, to locate the Stock Landings and Slaughter Houses, and to Incorporate "the Crescent City Live Stock Landing and Slaughter House Company."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That from and after the first day of June, A. D. (1869) eighteen hundred and sixty-nine, it shall not be lawful to land, keep or slaughter any cattle, beeves, calves, sheep, swine or other animals, or to have, keep or establish any stock landing, yards, pens, slaughter houses, or abattoirs at any point or place within the city of New Orleans or the parishes of Orleans, Jefferson and St. Bernard, or at any point or place on the east bank of the Mississippi river within the corporate limits of the city of New Orleans, or at any point on the west bank of the Mississippi river, above the present depot of the New Orleans, Opelousas and Great Western Railroad Company, except that the "Crescent City Stock Landing and Slaughterhouse Company" may establish themselves at any point or place as hereinafter provided. Any person or persons, or corporation or company carrying on any business or doing any act in contravention of this act, or landing,

slaughtering or keeping any animal or animals in violation of this act shall be liable to a fine of two hundred and fifty dollars ($250) for each and every violation, the same to be recoverable, with costs of suit, before any court of competent jurisdiction.

SEC. 2. *Be it further enacted, etc.,* That William D. Sanger, Joseph H. Pearson, J. R. Irwin, John Wharton, Franklin J. Pratt, R. T. Packwood, N. W. Travis, Henry V. Barringer, L. P. Sanger, W. S. Mudgett, Oliver D. Russell, J. Viosca, S. P. Griffin, L. H. Crippen, William McKenna, A. J. Oliver, F. G. Clark and their successors be and are hereby created a body politic and corporate to be known and designated as the "Crescent City Live Stock Landing and Slaughter House Company," and by that name and style shall sue and be sued, purchase, hold, sell, contract, lease and release, grant and transfer, and may do all things necessary for the purposes hereinafter mentioned, and perform all other acts, and exercise and enjoy all other rights and privileges incident to corporations; adopt and use a common seal, make, publish and alter at pleasure by-laws, rules and regulations for the government of the company or corporation and the carrying on of its business; shall determine and appoint their officers, and fix their compensation and term of office, and shall fix the amount of the capital stock of the said company or corporation and the number of shares thereof.

The domicile of the company or corporation shall be in the city of New Orleans, and the President shall be the proper officer on whom to serve citations, notices and other legal process wherein this company or corporation may be interested.

SEC. 3. *Be it further enacted, etc.,* That said company or corporation is hereby authorized to establish and erect at its own expense, at any point or place on the east bank of the Mississippi river within the parish of St. Bernard, or in the corporate limits of the city of New Orleans, below the United States Barracks, or at any point or place on the west bank of the Mississippi river below the present depot of the New Orleans, Opelousas and Great Western Railroad Company, wharves, stables, sheds, yards, and buildings necessary to land, stable, shelter, protect and preserve all kinds of horses, mules, cattle and other animals, from and after the time such buildings, yards, etc., are ready and complete for business, and notice thereof is given in the official journal of the State; and the said Crescent City Live Stock Landing and Slaughterhouse Company shall have the sole and exclusive privilege of conducting and carrying on the live stock landing and slaughterhouse business within the limits and

privileges granted by the provisions of this act; and cattle and other animals destined for sale or slaughter in the city of New Orleans, or its environs, shall be landed at the live stock landings and yards of said company, and shall be yarded, sheltered and protected, if necessary, by said company or corporation; and said company or corporation shall be entitled to have and receive for each steamship landing at the wharves of the said company or corporation, ten ($10) dollars; for each steamboat or other water craft, five ($5) dollars; and for each horse, mule, bull, ox or cow landed at their wharves, for each and every day kept, ten (10c.) cents; for each and every hog, calf, sheep or goat, for each and every day kept, five (5c.) cents, all without including the feed; and said company or corporation shall be entitled to keep and detain each and all of said animals until said charges are fully paid. But if the charges of landing, keeping and feeding any of the aforesaid animals shall not be paid by the owners thereof after fifteen days of their being landed and placed in the custody of the said company or corporation, then the said company or corporation, in order to reimburse themselves for charges and expenses incurred, shall have power, by resorting to judicial proceedings, to advertise said animals for sale by auction, in any two newspapers published in the city of New Orleans, for five days; and after the expiration of said five days, the said company or corporation may proceed to sell by auction, as advertised, the said animals, and the proceeds of such sales shall be taken by the said company or corporation, and applied to the payment of the charges and expenses aforesaid, and other additional costs; and the balance, if any, remaining from such sales, shall be held to the credit of and paid to the order or receipt of the owner of said animals. Any person or persons, firm or corporation violating any of the provisions of this act, or interfering with the privileges herein granted, or landing, yarding or keeping any animals in violation of the provisions of this act, or to the injury of said company or corporation, shall be liable to a fine or penalty of two hundred and fifty ($250) dollars, to be recovered with costs of suit before any court of competent jurisdiction.

The company shall, before the first of June (1869), eighteen hundred and sixty-nine, build and complete a grand slaughterhouse of sufficient capacity to accommodate all butchers, and in which to slaughter five hundred animals per day; also that a sufficient number of sheds and stables shall be erected before the date aforementioned, to accommodate all the stock received at this port, all of

which to be accomplished before the date fixed for the removal of the stock landing, as provided in the first section of this act, under penalty of a forfeiture of their charter.

SEC. 4. *Be it further enacted, etc.,* That the said company or corporation is hereby authorized to erect, at its own expense, one or more landing places for live stock, as aforesaid, at any points or places consistent with the provisions of this act, and to have and enjoy from the completion thereof, and after the first day of June, A. D. (1869), eighteen hundred and sixty-nine, the exclusive privilege of having landed at their wharves or landing places all animals intended for sale or slaughter in the parishes of Orleans and Jefferson; and are hereby also authorized (in connection) to erect at its own expense one or more slaughter houses, at any points or places consistent with the provisions of this act, and to have and enjoy, from the completion thereof, and after the first day of June, A. D. (1869), eighteen hundred and sixty-nine, the exclusive privilege of having slaughtered therein all animals, the meat of which is destined for sale in the parishes of Orleans and Jefferson.

SEC. 5. *Be it further enacted, etc.,* That whenever said slaughter houses and accessory buildings shall be completed and thrown open for the use of the public, said company or corporation shall immediately give public notice for thirty days, in the official journal of the State, and within said thirty days notice, and within, from and after the first day of June, A. D. (1869) eighteen hundred and sixty-nine, all other stocklandings and slaughterhouses within the parishes of Orleans, Jefferson and St. Bernard shall be closed, and it will no longer be lawful to slaughter cattle, hogs, calves, sheep or goats, the meat of which is determined for sale within the parishes aforesaid under a penalty of one hundred ($100) dollars for each and every offense, recoverable, with costs of suit, before any court of competent jurisdiction. That all animals to be slaughtered, the meat whereof is determined for sale in the parishes of Orleans or Jefferson, must be slaughtered in the slaughterhouses erected by the said company or corporation, and upon a refusal of said company or corporation to allow any animal or animals to be slaughtered after the same has been certified by the inspector, as hereinafter provided, to be fit for human food, the said company or corporation shall be subject to a fine in each case of two hundred and fifty dollars, recoverable, with costs of suit, before any court of competent jurisdiction; said fines and penalties to be paid over to the Auditor of Pub-

lic Accounts, which sum or sums shall be credited to the educational fund.

SEC. 6. *Be it further enacted, etc.*, That the Governor of the State of Louisiana shall appoint a competent person, clothed with police powers, to act as inspector of all stock that is to be slaughtered, and whose duty it will be to examine closely all animals intended to be slaughtered, to ascertain whether they are sound and fit for human food or not; and if sound and fit for human food, to furnish a certificate stating that fact, to the owners of the animals inspected; and without said certificate no animals can be slaughtered for sale in the slaughterhouses of said company or corporation. The owner of said animals so inspected to pay the inspector ten (10) cents for each and every animal so inspected, one-half of which fee the said inspector shall retain for his services, and the other half of said fee shall be paid over to the Auditor of Public Accounts, said payment to be made quarterly. Said inspector shall give a good and sufficient bond to the State, in the sum of five thousand dollars, with sureties subject to the approval of the Governor of the State of Louisiana, for the faithful performance of his duties. Said inspector shall be fined for dereliction of duty fifty ($50) dollars for each neglect. That said inspector may appoint as many deputies as may be necessary. The half of the fees collected as provided above, and paid over to the Auditor of Public Accounts, shall be placed to the credit of the educational fund.

SEC. 7. *Be it further enacted, etc.*, That all persons slaughtering or causing to be slaughtered, cattle or other animals in said slaughterhouses, shall pay to the said company or corporation the following rates or perquisites, viz: For all beeves, one ($1) dollar each; for all hogs and calves, fifty (50) cents each; for all sheep, goats and lambs, thirty (30) cents each; and the said company or corporation shall be entitled to the head, feet, gore and entrails of all animals, excepting hogs, entering the slaughterhouses and killed therein, it being understood that the heart and liver are not considered as a part of the gore and entrails, and that the said heart and liver of all animals slaughtered in the slaughterhouses of the said company or corporation shall belong, in all cases, to the owners of the animals slaughtered.

SEC. 8. *Be it further enacted, etc.*, That all the fines and penalties incurred for violations of this act shall be recoverable in a civil suit before any court of competent jurisdiction, said suit to be brought and prosecuted by said company or corporation in all cases where the privileges granted to the said company or corporation by the

provisions of this act are violated or interfered with; that one-half of all the fines and penalties recovered by the said company or corporation in consideration of their prosecuting the violation of this act, and the other half shall be paid over to the Auditor of Public Accounts, to the credit of the educational fund.

SEC. 9. *Be it further enacted, etc.*, That said Crescent City Live Stock Landing and Slaughterhouse Company shall have the right to construct a railroad from their buildings to the limits of the city of New Orleans, and shall have the right to run cars thereon, drawn by horses or other locomotive power, as they may see fit; said railroad to be built on either of the public roads running along the levee on each side of the Mississippi river. The said company or corporation shall also have the right to establish such steam ferries as they may see fit to run on the Mississippi river between their buildings and any points or places on either side of said river.

SEC. 10. *Be it further enacted, etc.*, That at the expiration of twenty-five years from and after the passage of this act the privileges herein granted shall expire.

SEC. 11. *Be it further enacted, etc.*, That all laws, or parts of laws, contrary to or inconsistent with the provisions of this act be and the same are hereby repealed.

SEC. 12. *Be it further enacted, etc.*, That this act shall take effect from and after the first day of June A. D. (1869) eighteen hundred and sixty-nine.

(Signed) CHAS. W. LOWELL,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

Approved March 8, 1869.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

GEO. E. BOVEE,
Secretary of State.

NEW ORLEANS REPUBLICAN PRINT, 57 ST. CHARLES STREET.

In the Supreme Court of the U. S.

SLAUGHTER-HOUSE CASES.

Motion to Enforce the Supersedeas on Writ of Error.

BRIEF of P. PHILLIPS.

The aid of the Court is invoked to give effect to the supersedeas which results from the writ of error, allowed by one of the Justices of this Court.

We are met with the preliminary objection that the motion cannot now be entertained because the writ of error is not returnable until the next term of the Court.

If we are entitled to the protection which we ask, it is grantable now. We do not seek to raise any question involved in the record of the case, and which only could be disposed of when the record was properly filed in the Court. The question is, as to a right connected, it is true with the Record, but one that is not raised in it.

To admit we have the right but could not apply for its enforcement until the return day would place the applicant in a position in which protection would be unavailing.

In ex-parte, Milwaukee, the bond for supersedeas was rejected by the judge below on 16 March, 1867, and this Court ordered the supersedeas at its December Term, 1866.

5 Wall, 188.

In Rail Road Company v. Bradleys, the decree below was entered on the 6 February, 1869, and the supersedeas was allowed in this court at the December Term, 1868.

7 Wall., 577.

These cases show that the motion for supersedeas in this Court was made before the return term.

What is the effect of a writ of error or appeal.

First, independent of statutory regulation.

Second, under the act of 1789.

Third, as affected by the act of 1793.

First.

In England the *allowance* of the writ suspends all further proceedings, and these will be set aside on motion.

Miller v. Newbold, 1 East, 662.

Sampson v. Brown, 2 East, 437.

Meagher v. Vandick, 2 Bos. & Pul., 370.

Dudley v. Stokes, 2 Wm. Bl., 1183.

The *service* of the allowance is only material to bring the party into contempt if he proceed subsequently.

Jackques v. Nixon, 1 D. & E., 280.

In Throckmorton v. Church, Church, the plaintiff, below took out execution against Mead, the bail, on which goods were seized. Mead petitioned the House of Lords against the *Attorney*, alleging that his act was a contempt, and breach of previlege, as a writ of error was then pending.

It was urged in opposition that the writ in the House of Lords only staid the proceedings upon the judgment against the principal; whereas the recognizance by the bail was a distinct record.

But it was resolved that this was a contempt and breach

of privilege, and the plaintiff's attorney was ordered to make restitution.

1 Pr. Wms., 685.

Appeal.

In the reign of Queen Elizabeth an appeal from the Court of Chancery was remitted by her to the twelve judges.

Subsequently the appeal was to the House of Lords.

Towards the end of the reign of Charles the First, the Lords asserted this jurisdiction without any writ directed from the King.

This jurisdiction comprehended *all interlocutory orders* as well as a final decree, and included the power of reforming and remodelling the necessary relief.

This claim of the Lords was strongly contested by the Commons, but has long since been submitted to.

1 Woodesson, 232.

During this contest it was asserted by the Lords to be the law that the mere presenting the appeal to the House of Lords suspended *all proceedings whatever* in the court below, and, as late as 1772 it was supposed that an appeal had the effect of totally suspending the jurisdiction of the Lord Chancellor *as to the whole suit*, until the decision of the Lords on the appeal.

At this time it was determined that the jurisdiction of the Chancellor was suspended *only as to the matter appealed from*, but did not affect a proceeding as to any other matter in the cause.

This rule was setttled by Lord Apsley and was followed by the practice of allowing the chancellor *during the recess of Parliament* to take such proceedings pending the appeal as were *requisite for the preservation of the rights of the parties.*

In 1807 it was finally determined, (15 Vesey 184) that an appeal did not stay any proceedings even on the point

appealed from without an express *order of the Appellate Court;* unless the *chancellor in the exercise of his judicial discretion thought proper to suspend the proceedings wholly or in part.*

Hart v. Mayor, 3 Paige 383.

In many of the States the rule as stated by Lord Apsley was followed until it was changed by the decision in 1807, when that became the rule. This is illustrated by the decisions of New York, where the practice established in 1807, was followed until altered by the revised Statutes.

In Kentucky it is held that the appeal not only suspends the decree as to the main subject, but also suspends the operation of all orders made during the same term, incidental or relating to the principal matter in contest, a *habere facias possessionem* had been issued on a judgment at law pending an appeal from a decree in chancery affecting the suit at law. This was set aside as violative of the appeal.

Yocum v. Moore, 4 Bibb. 221.

In Virginia it is held that a dissolved injunction is revived by an appeal taken by the plaintiff in a court of chancery, and an attachment for contempt will lie against a party who takes out execution on a judgment at law after notice of the appeal.

Turner v. Scott, 5 Rand, 332.

In Illinois, when temporary injunction continues to final hearing and is then dissolved and Bill dismissed, a perfected appeal suspends the Decree dissolving the injunction, and leaves it in full force.

Brester v. McCune, *et al*, Chicago Legal News, 5 November, 1870.

In California the effect of the appeal as declared is to

suspend all proceedings, and preclude the doing of any act for the purpose of carrying the decree into effect, as the decree is held "inoperative for any purpose until the appeal is disposed of."

McGarahan v. Maxwell, 28 Cal. 75.

In Mississippi an order dissolving an injunction when appealed from, is said necessarily to suspend the decision and decree, else the appeal is allowed and disallowed by the same judgment.

Penrica v. Walles, 37 Miss. 184.

In Iowa when an appeal is taken, it is held that all power of the court below over the parties, and subject matter of the controversy is lost until the cause or some part thereof is remanded back.

Levi v. Karreck, 15 Iowa, 444.

In Maryland this power of the House of Lords to suspend proceedings is said not to be an arbitrary one, but is incidental to its judicial character. That it is necessary to the appellate court to preserve the usefulness of its appellate jurisdiction. That if it were otherwise, cases might arise in which the appeal would be but a shadow pending which the substance might be lost.

While adhering to the English rule that the appeal does not of itself suspend the decree they also adopt the necessary incident that pending the appeal, proceedings may be stayed either by order of the chancellor *or by the order of the appellate court on such terms as the particular circumstances of such case may require.*

Thompson v. McKim, 6 Har. & John, 333.

Again when the court is asked to take a step in a cause after an appeal taken and bond given, it is absolutely neces-

sary to be shown that in no contingency it can prove injurious to the appellant.

Ohio Life Ins. Co., v. Wenn & Ross, 4 Md. Chan, 267-70.

The following case will show how the subject is treated in England:

Lord Mount Cashel filed his petition against Lord O'Neill, and obtained an injunction against his cutting timber trees on a certain lease-hold estate.

On filing the answering affidavit, the Master of the Rolls gave leave to the parties to try their right by an action at law. This was done, and there was judgment at law in favor of O'Neill, who then applied for a dissolution of the injunction, which was granted.

The High Court of Chancery was then appealed to, to vary this order, and continue the injunction until final judgment was given in the case, which was *in transitu* to the House of Lords.

The Court admitted that so far as it was concerned, there was a final determination in favor of O'Neill, and that it was a novel question whether a Court of equity could suspend the rights of a party successful at law, though the authorities were numerous as to the power of the Court to suspend the execution of its own Decrees pending an appeal.

The Court concludes that such an application is within the discretion of the Court, that in coming to the conclusion the circumstances which weighs most is, on which side the balance of inconvenience, or the balance of danger, most inclines.

After a full consideration of all the facts of the case the injunction was ordered to be continued.

Earl of Mount Cashel v. Viscount O'Neill Irish, Eq. Rep. N. S. Vol. 3 p. 619.

In Louisana the effect of the appeal is thus emphatically stated. "It is a well settled rule that after a cause is sent to the Supreme Court by regular appeal from any of the inferior tribunals of the State, the court of the first instance can no longer take any steps in the case except such as may be necessary to transmit the record to the court above."

State of Louisana v. Judge, 19 Loui. 168.

See cases cited in Mr Campbell's Brief, p. 6.

It is not understood that these general terms prohibit the judge a quo from doing what may be necessary to preserve property which may be in dispute from deterioration or destruction for the interest of both parties equally demand this.—

These citations might be greatly extended, but they are deemed sufficient to show:

First—that while the writ of error was confined to final judgments, the appeal extended to interlocutory orders.

Second—that the suspensive appeal when bond was required, absolutely terminated the control of the court below over the cause.

Third—when no bond was required, the court of the first instance, or the appellate court exercised the discretion of staying the proceedings below until the appeal was finally disposed of.

Second.

The writ of error and appeal under the acts of 1789 *and* 1803.

At the time of the adoption of the Constitution, the

rule in England was that declared by Lord Apsley, to wit: that the appeal operated to suspend the jurisdiction of the Chancellor only as *to the matter appealed* from, but did not affect any other proceeding, and that during the recess of parliament the chancellor might take such proceedings as were *necessary for the preservation of the rights of the parties.*

In this state of the English law, the act of 1789 was passed. It provided that—all cases should be revised by the Appellate Court, whether in law or equity, by the *writ of error*, and this writ could only be sued out on a *final* judgment or decree.

By this important change the delay occasioned by appeals from interlocutory orders under the English system was destroyed.

After providing for the writ of error generally, and requiring the justice signing the citation to take sufficient security from the plaintiff in error to answer all damages and costs if he fail to make his plea good, it specially provides that the writ *shall be a supersedeas and stay execution* where it is served within ten days from the rendition of the judgment or passing the decree.

By the act of 1803, (2 Stats. 244,) the appeal in equity causes was substituted "subject to the same rules, regulations and restrictions as are prescribed in cases of writs of error."

Let us first consider the motion now made, as if the case had properly been instituted in the Distrct Court of the United States with the right of appeal or writ of error to the Circuit Court, and from the Circuit Court to this Court.

In the case No. 475, Inbau Aycock & Co., filed their petition in the Seventh District Court, to be protected in

their business and property against the threatened invasion of their rights by the Slaughter-House Company, the preliminary injunction prayed for was subsequently perpetuated (p. 19;) and on appeal to the Supreme Court this judgment was reversed, the plaintiffs demand rejected, and the injunction dissolved, p. 23.

In the case No. 476, the petition was filed by the Butchers' Benevolent Association, in the Sixth District Court, against the same defendant, and for same purpose, and the preliminary injunction prayed for was perpetuated. P. 55.

On appeal to the Supreme Court this judgment was reversed as in No. 475.

In the case No. 477 the petition was filed by the Live Stock Dealers' Association against the same defendant, in the Seventh District Court. The preliminary injunction was perpetuated; and on appeal by defendants the Supreme Court reversed the judgment as in No. 475.

In No. 479 the petition for the injunction was filed in the Fifth District Court by the Attorney General against the Live Stock and Butchers' Association, and one Cavaroc, to restrain the former from leasing the property of Cavaroc, and the latter from using it for the purposes of landing, slaughtering, &c., a perpetual injunction was granted (p. 24;) and this judgment was affirmed by the Supreme Court.

In No. 480 the petition was filed in the Fifth District Court against the Butchers' Benevolent Association, the preliminary injunction perpetuated, and on appeal to the Supreme Court this judgment was affirmed.

All these cases involved the same question, to wit, the constitutionality of the monopoly claimed under the State act of 1869, No. 118.

In all, the appeals from the District to the Supreme Court were suspensive.

In all, the writ of error allowed by Mr. Justice Bradley, with bond, was filed within 10 days from the rendition of the judgments in the Supreme Court of the State.

But notwithstanding the writ of error the court below has proceeded to execute the preliminary injunctions in favor of the monopoly set up by the Slaughter-house company, and is thus maintaining all the pretensions which are asserted by it; while these very pretensions were the sole subject of the appeal to the Supreme Court, and of the claim to revision in this court by writ of error.

Attachments for contempt have been issued against some of the defendants for pursuing their usual avocation, as they have been accustomed to do.

The property of another defendant, Cavaroc, has been taken possession of by the sheriff, under order of the court to prevent its being used as a landing place for cattle, and this has been done by action taken in the fifth District Court transferring the case to the Eight District Court. (See affidavit X, pp. 7, 9, 16, 17, 29, 30.)

Not content with the enforcement of the injunction through the officer of the court, proceedings have been had to which the present appellants were not parties, and by which a mandate has been directed to the City of New Orleans, the Administrator of Commerce, the Administrator of the Police of said city, the Metropolitan Board of Police, an independent organization, enjoining them to prevent the appellants from using their occupation and their property as they claim in this litigation they have the right to do.

These proceedings are had through the intervention, we should say the *interference* of the Attorney General, in a

litigation between citizens, for the settlement of their private rights. His first move was to make the decision of the Supreme Court executory; but this was denied by the court, on the ground that the writ of error was a supersedeas.

Not to be baffled, he immediately moved for execution on the *preliminary injunction* which was granted. This interference of the Attorney General on behalf of one of the litigants was had after the allowance of the writ of error, and his citation to appear in this Court.

The distinction attempted to be drawn between executing the preliminary injunction, and executing the order perpetuating it, we think is not maintainable.

The injunction is issued in the first instance upon a decision of the merits of the claim as stated by the applicant. When the other side is heard and shows no cause for change in this decision, the court directs it to be perpetuated. In substance, there is but the *one* injunction, and when the suspensive appeal is taken, the question in the appellate court is the correctness of that decision and the action of the court in giving effect to it.

In this litigation, the injunction is all that is asked for on the one side, and all that is resisted on the other, and if the preliminary injunction is not arrested, what benefit has the appellant by taking a *suspensive* appeal?

By the action of the court below one of the litigants is now put in the enjoyment of all the rights he lays claim to, the other litigant is deprived of all the protection and indemnity which he claims under the Constitution of the United States, and this is done in the face of the Act of Congress which secures the right of a review in this court, and declares that pending the litigation there shall be a supersedeas to the execution of the judgment appealed from.

If then this case had originated in the District or Circuit Courts of the United States, over which this court possesses an inherent revisory power, this court without the aid of a statute would issue such process to the court below and to the parties to the controversy, as to make good the supersedeas declared by the act.

But the same act which declares the right to the supersedeas also confers in express terms the power to issue all writs necessary to the exercise of its jurisdiction.

How this power has been hertofore exercised will be seen in the decisions of this Court.

In Stockton v. Bishop, an execution had been issued on a judgment after writ of error filed and bond given. Relief was prayed for in this Court. Judge Story delivering the opinion said—"The execution might have been quashed by an application to the Court below. But it is equally competent for this court in furtherance of justice to do the same thing."

In the very carefully prepared order, the supersedeas is directed to the *Marshal and his deputies*, and "*you the judges* of the said Circuit Court are hereby commanded that such further proceedings be had in the premises in conformity to this order."

2 Howd. 74.

This order is adopted in the case of Hardeman v. Anderson, where the Court held that the writ of error and bond operated as a supersedeas *per se*, and directed a supersedeas, though the writ of error had been dismissed, as it was shown that the failure to file the Record was due to the neglect of the clerk.

4 Howd. 643.

In Ex-parte Milwaukee, the judge below had rejected the bond for a suspensive appeal from the decree on the

ground that the securities were non residents, this Court refused the application for a mandamus as unnecessary, holding "that by the 14 section of the judiciaray act they could issue *any writ* which might be necessary to *render effectual the appellate jurisdiction*," a supersedeas was granted.

5 Wall. 188.

In the case of Rail Road Company v. Bradleys, the Washington G. & A. R. R. Company had filed a bill to enjoin the City of Washington and Bradley the trustee from making sale of certain property, an injunction was accordingly granted, but after proceedings were had in the cause, this injunction was dissolved, a sale directed, and the proceeds ordered to be brought into court.

From this decree an appeal was taken by the Rail Road Company, and it having been shown that the bond was filed in time this Court awarded a supersedeas, and arrrested the effect of the dissolution of the injunction.

7 Wall. 377.

And in this very litigation Mr. Justice Bradley has said, "Does an appeal properly allowed supersede the decree? Will a defendant after appealing from a decree for specific performance requiring him to execute a Deed be amenable to an attachment if he neglects to execute such Deed?"

"It would seem to be the logical consequence that the *whole effect of the decree is suspended*, and that without some special order to the contrary, *things must remain in statu quo ante decretum* until the appeal is determined."

Chicago Legal News, 5 September, 1870.

It will be seen that the action of the Court in enforcing the supersedeas extends not only to the subordinate tribunal and the parties to the suit, but to all persons engaged in violating the right secured by the supersedeas.

This must necessarily be so; for if this right is under the protection of the Court, it is of no consequence what is the character of the parties, or what their numbers.

In the case Ex-parte Morris and Johnson, a fund had been distributed under the decree of the District Court among various persons not parties to the suit, on an appeal the decree was reversed, and restitution ordered. The district judge returned that he could not make restitution, as he had no jurisdiction over the parties; but this Court issued a peremptory mandamus holding that all the distributees within the territorial jurisdiction must be required to refund; and on failure to do so should be dealt with promptly by attachment for contempt.

8 Wall, 607.

We submit, therefore, that if these proceedings had taken place in a District or Circuit Court after a writ of error to operate, as a supersedeas had been allowed and filed, they would have been regarded as a contempt of the authority of this Court, and no hesitation would have been felt in issuing such process as would have effectually protected the right intended to be secured to the applicant.

Is the power of this Court over the subject any less because as in this case the writ of error is directed to the Supreme Court of the State?

We all understand the general principle that the State and Federal Courts are independent of each other. But this general principle is subject to the exceptions contained in the 25th section of the Judiciary act, which provides that over judgments which involve the decision of certain federal questions, the power of revision by writ of error shall be exercised by this Court, and this is to be done "in the same manner and under the same regulations, and the

writ of error is to have the same effect, as if the judgment or decree complained of had been rendered or passed in a *Circuit Court.*

In sustaining the constitutionality of the 25 section, Marshal, C. J. in Cohens v. Virginia, said, that the general government though limited in it objects was supreme in respect to those objects; that the judicary power was co-extensive with the legislative, and capable of deciding any question growing out of their constitution and laws; that it was important to have uniformity of interpretation in all cases, civil and criminal, in which *a right under them should be asserted under the authority of the United States;* and that it was no objection to the exercise of jurisdiction under the 25 section, that a State was one of the parties.

6 Wheat, 264.

The effect of the writ of error to a State Court, in a criminal case was considered in Bryan v. Bates. A petition was presented to the Chief Justice, and, by him adjourned into the full court for a writ of habeas corpus, the party being in prison under commitment by the Superior Court. The party had been convicted of selling liquors, the judge refusing to stay the judgment and sentence. Within ten days Bryan had obtained a writ of error from one of the Justices of this Court, and gave bond. It was held by the Supreme Court of Massachusetts, that the writ of error superseded and stayed the execution of the sentence, and that he was entitled to his habeas corpus, and to a discharge from his imprisonment under the sentence so superseded.

12 Allen, 211.

As this Court is expressly authorized to issue all writs

which may be necessary for the exercise of its jurisdiction, we see no reason why these writs should not be used in the enforcement of a supersedeas to a State Court in the same manner, and to the same extent as to a Circuit Court.

Third as to the act of 1793.

Among the writs proper to be used for the exercise of its jurisdiction is clearly included the writ of injunction; and the question now to be considered is, if the Court could have granted an injunction prior to 1793, to enforce the supersedeas, is there any thing in this act which takes away the power?

The statute relates to various and distinct questions regulating the practice of the Court. Its fifth section provides as follows:

"Writs of Ne exeat and injunction may be granted by any Judge of the Supreme Court in cases where they might be granted by the Supreme or a Circuit Court; but no writ of ne exeat shall be granted unless a suit in equity be commenced, and satisfactory proof made that the defendant designs quickly to depart from the United States; nor shall a writ of injunction be granted to stay proceedings in any court of a State; nor shall such writ be granted in any case without previous reasonable notice."

We observe in the first place that there are no repealing words in this act to affect the provisions of the act of 1789, and we use the words of this Court in saying "that repeals by implication are not favored, and that they are seldom admitted except on the ground of repugnancy, and never where the former act can stand together with the new act

That the act was not intended to alter or amend the act of 1789, is evidenced by the title; "An act in *addition* to the act entitled, an act to establish the Judicial Courts of the United States."

It is evident that the injunction referred to in the 5th section, is that which is in ordinary use in courts of chancery, for the purpose of staying proceedings at law, and the inhibition was intended solely to prevent collision between the Federal and State Courts.

In the case of Diggs v. Wolcott the decree of the Circuit Court enjoined the defendant from proceeding in a State Court, 4, Cr. 119.

In Peck v, Jenness, the District Court in Bankruptcy, enjoined proceedings in a State Court. 7 Howard, 625.

In both these cases it was held that the act of 1793, forbade the injunction.

It is submitted that this restraint in the act is founded in mere caution, and that if it did not exist the determination would be the same upon the well recognized principles, asserted in Taylor v. Carryl, 20 Howard, 583; and Freeman v. Howe, 24 Howard, 453.

For the same reason that the Federal Courts cannot send an injunction to the State Courts, the latter cannot enjoin proceedings in the former.

McKim v. Voorhees, 7 Cr., 280.

This proceeds upon peculiar grounds of municipal and constituiional law, the respective courts being entirely competent to administer full relief in the suits pending therein.

Story's Eq., § 900.

Before concluding we invite the attention of the Court to two cases on the effect of the suspensive appeal in Louisiana.

In one, a party claiming the office of Sheriff obtained by the writ of mandamus an order on the incumbent to deliver up to him the office, books, papers, &c., pertaining to the Sheriffalty of St. Tamany.

State Louisiana, Ex Rel. Ingram v. Judge 6th District Court, 20 Ann. 530.

The other was a contest for the chieftaincy of the Police, and the action was by quo warranto, on which an injunction was issued, commanding Cain the incumbent not to interfere with Diamond the applicant in the discharge of his duties.

State Ex Rel. Cain v. Judge 6th District Court, 20 Ann. 574.

In both, the court of first instance refused the suspensive appeal, but in both on application to the Supreme Court it was ordered.

The Court held that the right to such an appeal had been constantly recognized.

They say it is true that inconveniences may result from such a stay of proceedings, but that the inconvenience of the opposite course would be still greater.

That the right to a suspensive appeal is not an exceptional one.

That a careful examination of the code of practice shows, that the right to a suspensive appeal is the Rule, and, *that it stays proceedings, save in cases specially excepted.*

These cases are identical in their nature with the con-

troversy now before the Court, where the contest is over a franchise or exclusive right granted by the legislature.

This exclusive right we maintain, is denounced by the Constitution of the United States. The judgment which denies to us the protection of the constitution is brought to this Court, by writ of error, which the statute declares shall operate as a supersedeas, and stay execution.

In granting the writ, the Justice of this Court was not called on to determine the question whether the act of the legislature was unconstitutional, as alleged by us. His duty was solely directed to the enquiry, whether this was put in issue, and determined by the judgment of the Court.

If a motion were now made to dismiss the writ of error for want of jurisdiction, the Court would not hear argument on the question of the validity of the statute.

It would seem necessarily to follow, that as the writ has been allowed, on the ground that a Federal question is involved in the decision of the case, that, in seeking the aid of the Court to make that writ a supersedeas, as directed by the statute, a discussion of the validity of the statute is unnecessary and out of order.

We submit, that the aid we ask is fully authorized under the 14 and 23 sections of the Act of 1789, and, that in the absence of these sections, the Court by virtue of its appellate power would still be authorized, as are the Courts in England, to exercise a judicial discretion on the peculiar circumstances of the case in arresting by its order all proceedings subsequent to the decree and pending the appeal. No stronger case for the exercise of this discretion could be presented, than the one now before the Court.

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Pozos.

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